

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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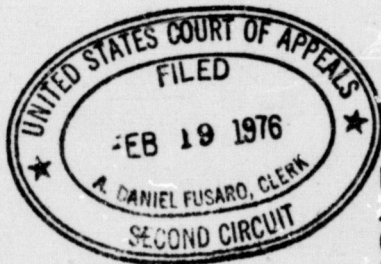
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-6134

NED MILLER and FRANCES MILLER,
Plaintiffs-Appellants,
-against-
THE UNITED STATES OF AMERICA,
Defendant-Appellee.

B
P/S

APPELLANTS' APPENDIX



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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

NED MILLER and FRANCES MILLER

vs.

UNITED STATES OF AMERICA

For Plaintiff

FREDERICK & GOGLIO
167 Willis Ave.
Mineola, N. Y. 11501
516-248-8806

For Defendant

U. S. ATTORNEY

BASIS OF ACTION: Over payment of income taxes

Seeks \$37,923.75

<u>Date</u>	<u>Filings - Proceedings</u>	<u>Amount Reported in Emolument Returns</u>
6-20-69	Complaint filed. Summons Issued	1
6-23-69	Summons returned and filed. Deft srvd on 6-20-69 & by certified mail.	2
8-20-69	ANSWER of debt filed. (certificate of service by mail on 8-18-69)	3
1-20-69	Before Abruzzo, J. Case called. 90 days to Complete Discovery.	
1-20-70	Deft's notice to take the deposition of Irving Frederick on 1/28/70 filed.	4
8-17-70	Notice of motion and memorandum of law filed, for an order terminating the taking of deposition of Irving Frederick etc. (ret Aug 21, 1970)	5/6
8-20-70	Deft's memorandum filed in opposi- tion to plttfs' motion to limit taking deposition etc.	7
8-21-70	Before ABRUZZO, J. - Motion ter- minating taking of deposition of Irving Frederick etc. adjd to 9-4-70.	
9-4-70	Before ABRUZZO, J. - Motion to terminate taking of deposition of Irving Frederick etc. SUBMITTED.	

DOCKET ENTRIES

<u>Date</u>	<u>Filings - Proceedings</u>	<u>Amount Reported in Emolument Returns</u>
9-11-70	Deft's memorandum filed in reply to pltffs' reply memorandum	8
10-16-70	Before ABRUZZO, J. - Motion terminating taking of deposition of Irving Frederick adjd to 10-23-70.	
10-23-70	Before ABRUZZO, J. - Hearing on motion, terminating taking of deposition of Irving Frederick - Deposition stayed until motion for summary judgment which is to be made by both sides on the question of statute of limitations.	
11-4-71	Notice of motion with memorandum filed dismissing complaint (ret 11-9-71)	9
11-4-71	Affidavit of Ned Miller and memorandum filed, in opposition to motion to dismiss	10/11
11-4-71	Deft's notice to take deposition of pltff on 11-9-71 filed.	12
11-9-71	Before COSTANTINO, J. - Hearing on deft's motion to dismiss etc. Motion argued - Decision reserved.	
1-17-71	By Costantino, J. - Order of 11/16/71 denying deft's motion to dismiss filed.	13
1-5-72	Deft's supplemental memorandum filed, in support of its motion to dismiss.	14
1-18-72	Letter to Judge Costantino, from David A. Wilson Jr. dated 1-14-72 re: correction of page 2 of deft's supplemental memo filed.	15

DOCKET ENTRIES

<u>Date</u>	<u>Filings - Proceedings</u>	<u>Amount Reported in Emolument Returns</u>
2-15-72	Deft's notice to take the deposition of Mr. Milton Seitman on 2-23-72 filed.	16
2-16-72	Affidavit of Irving Frederick and Supplemental memorandum filed, in opposition to deft's motion to dismiss.	17/18
2-23-72	Before COSTANTINO, J. - Case called - Motion argued - decision reserved.	
3-14-72	Deposition of Pltff Ned Miller taken on 11-9-71 filed. (P/C mailed to attys)	19
3-14-72	Notice of motion and memorandum filed, pursuant to Rule 56 for summary judgment in favor of pltffs etc. (ret. Mar 29, 1972)	20/21
3-22-72	Deft's interrogatories to pltffs filed.	22
3-23-72	Letter of 3/16/72 from U.S. Dept. of Justice, treated as Supplemental memo of law in support of deft's motion to dismiss filed.	23
3-29-72	Before COSTANTINO, J. - Pltff's motion for summary judgment adjd without date.	
4-18-72	Pltff's (NED MILLER) answer to deft's interrogatory filed.	24
6-30-72	By COSTANTINO, J. - MEMORANDUM & ORDER FILED. Pltff's motion for summary judgment pursuant to Rule 56 is denied. So Ordered. (P/C mailed to attys)	25

DOCKET ENTRIES

<u>Date</u>	<u>Filings - Proceedings</u>	<u>Amount Reported in Emolument Returns</u>
7-5-72	By direction of Costantino, J., pltff's motion for summary judgment marked submitted (see paper #20)	--
8-15-72	By Costantino, J. - Memo & Order dtd 8/14/72 denying pltff's motion for summary judgment filed. (P/C mailed to attys)	26
10-18-72	Before COSTANTINO, J. - Case called - Trial adjd to 11-2-72 at 10:00 A.M.	
11-2-72	Letter from Scott P. Crampton Asst. Atty General dtd. 10-27-72 filed.	27
11-2-72	Before COSTANTINO, J. - Case called - Trial adjd to 2-8-73.	
2-8-73	Before Costantino, J. - Case called - Trial adj'd to 3/6/73	
3-6-73	Before Costantino, J. - Case called - Trial adj'd to 4/4/73 at 10:00 am.	
4-4-73	Before COSTANTINO, J. - Case called & trial adj'd to 4-5-73.	
4-5-73	Before COSTANTINO, J. - Case called. Trial ordered and begun.	
4-6-73	Motion to dismiss. Decision reserved. Trial concluded. Decision reserved.	
4-24-73	Stenographer's transcript dtd 4-5-73 filed.	28
7-2-73	Pltffs' post trial memorandum filed.	29
7-17-73	Deft's post-trial brief filed.	30

DOCKET ENTRIES

<u>Date</u>	<u>Filings - Proceedings</u>	<u>Amount Reported in Emolument Returns</u>
8-3-73	Pltffs' reply memorandum filed.	31
8-9-73	Pltffs' Pre-Trial Memorandum filed.	32
10-23-73	By COSTANTINO, J. - MEMORANDUM DECISION dtd 10-19-73 filed. The action by the Millers is barred by the Statute of Limitations and this court lacks jurisdiction, etc.	33
10-23-73	By COSTANTINO, J. - Order & decree dtd 10-19-73 that the complaint is dismissed filed. (p/c mailed to attys.)	34
11-16-73	Notice of appeal filed. Duplicate of appeal mailed to C of A and attys. jn	35
11-21-73	Bond on appeal filed.	36
12-7-73	Above record on appeal certified and handed to James Clarkin for delivery to the Court of Appeals, Second Circuit.	--
12-10-73	Acknowledgment recd and filed from the C. of A. for recpt. of Record on Appeal.	37
9-9-74	Certified copy of judgment and copy of opinion received from C of A reversing order of district court and that case be restored to court's docket filed. jn	38
1-13-75	Before COSTANTINO, J. - Case called & adj'd to 1-14-75 at 10 A.M. for pre-trial conference.	
1-14-75	Before COSTANTINO, J. - Case called Conference held and concluded - Decision reserved - All briefs by 3/14/75	

DOCKET ENTRIES

<u>Date</u>	<u>Filings - Proceedings</u>	<u>Amount Reported in Emolument Returns</u>
1-24-75	File ret'd from the C. of A. Acknowledgment mailed to the C. of A.	
2-14-75	Deft's supplemental post-trial brief filed.	39
3-25-75	Pltffs' post-restoration trial brief filed.	40
4-7-75	Deft's reply post-trial brief filed.	41
4-7-75	Before COSTANTINO, J. - Case called for hearing on motion for summary judgment. Motion argued. Decision reserved.	
11-25-75	By COSTANTINO, J. - Memorandum and Order dtd 11-25-75 that the tax- payers are not entitled to recover the federal income taxes and interest they seek filed. (mg)	42
11-26-75	JUDGMENT dtd 11-26-75 that the pltffs take nothing and the complaint is dismissed. (mg)	43
12-15-75	Notice of appeal filed. Duplicate mailed to C of A & deft. jn	44

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 NED MILLER,
5 FRANCES MILLER,

6 Plaintiffs

7 -against-

8 THE UNITED STATES OF AMERICA

9 Defendant.
10 -----X

11 United States Courthouse
12 Brooklyn, New York
13 April 5, 1973
14 12:00 noon

15 B e f o r e :

16 THE HONORABLE MARK A. COSTANTINO, U.S.D.J.
17
18
19
20
21
22

23 ILENE GINSBERG
24 ACTING OFFICIAL COURT REPORTER
25

APPEARANCES:

FREDERICK & COGLIO, ESQS.
Attorneys for the Plaintiff

BY: LEONARD FELDMAN, ESQ.

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: ROBERT M. ADLER, ESQ.,
Tax Division, Department of Justice

1
2 THE CLERK: Civil cause for trial,
3 Ned Miller and Frances Miller versus the
4 United States of America.

5 MR. FELDMAN: Your Honor, in this par-
6 ticular case, which is a claim for a recovery
7 from the government of a tax, improperly
8 assessed and paid, there are certain facts
9 concerning which there is no dispute.

10 The original assessment, \$37,923.37 --
11 when payment was made in 1964, payment was
12 made on June 15, \$30,468, and June 29, \$21,519.65.

13 So, the amount for recovery is \$51,987.65.

14 In order to facilitate and shorten the
15 proof, I believe I have the agreement of coun-
16 sel for both sides, that venue in this case
17 is proper in this Court; that the claim for
18 this original 1957 tax was timely filed, and
19 that the residence of the plaintiffs is
20 proper in this jurisdiction and not disputed.

21 So that we come down to the primary
22 issues in this case, which are two in number:
23 the government made its original assessment --
24 I am just arguing the facts in this brief
25 statement of the issues -- the government

1
2 contention in making the assessment is that
3 in 1957, the plaintiff received a dividend
4 from a firm owned, or corporation owned, by
5 the plaintiff, Ned Miller, known as 1680 Coney
6 Island Avenue Realty Corporation, and of
7 course the plaintiffs claim that no such
8 dividend was in fact paid, and no dividend
9 was paid, received or authorized.

10 The second issue in this case is the
11 government's claim that a statute of limita-
12 tions has run against the recovery in this
13 suit, in that the plaintiffs signed a waiver
14 on a particular date -- that Mr. Adler will
15 develop -- and that this suit was not brought
16 within the two years following the date of
17 that waiver. In that regard, the plaintiffs'
18 position is that there is no evidence or
19 proof to justify the conclusion that any
20 waiver was ever filed in this case, and alter-
21 natively, that the waiver, if filed, is not
22 binding as a result of a subsequent notice
23 issued by the government. These of course,
24 your Honor, will be developed in the course
25 of briefing, after all the evidence is in,

1
2 so there need be no attempt now to argue the
3 law or facts.

4 I think there is one other fact Mr. Adler
5 and I can agree on, and that is that the
6 original waiver document that the government
7 relies on is not in existence and cannot be
8 produced. Nobody has seen it in this case,
9 or if they have, it no longer exists.

10 Is that stated correctly, Mr. Adler?

11 MR. ADLER: The government agrees that
12 the waiver, the physical waiver, as of this
13 point, is lost.

14 THE COURT: It is not available.

15 X MR. FELDMAN: Not available.

16 To state the plaintiff's cause, the
17 plaintiff does not want to agree there ever was
18 a waiver. To state the issue for both sides,
19 the plaintiff claims there was no waiver, and
20 the government claims there was a waiver, but
21 they don't have it now.

22 MR. ADLER: For the record, the juris-
23 dictional and venue facts that Mr. Feldman
24 read into the record, the government agrees
25 those facts are accurate. At this stage there

1
2 is one important issue, at least for the
3 government's case, on the waiver issue, and
4 that is that the government requests the Court
5 to make a ruling at this stage, as to whether
6 the plaintiff's motion to suppress the deposi-
7 tion of Mr. Frederick will or will not be
8 granted. This motion was originally filed be-
9 fore Judge Abruzzo, and the matter stayed and
10 we brought this up to your Honor's attention
11 at the time the motion to dismiss was filed.

12 THE COURT: Mr. Frederick is presently
13 in court?

14 MR. ADLER: Yes.

15 MR. FELDMAN: And he will testify.

16 MR. ADLER: But the question we have is,
17 if the government needs the deposition for im-
18 peachment purposes, what use can we make of it
19 in view of the motion to suppress?

20 MR. FELDMAN: May I make a statement to
21 help the Court:

22 As I understand the rule on privilege
23 and on suppression, we don't really reach the
24 issue being raised --

25 THE COURT: Not until it is attempted

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2 to be used.

3 MR. FELDMAN: A lawyer cannot waive the
4 privilege, only the client himself --

5 THE COURT: Providing the client insti-
6 tuted an action for the specific relief. Then
7 the lawyer can discuss the matter.

8 MR. FELDMAN: Except this -- and keep
9 an open mind --

10 THE COURT: I have an open mind.

11 MR. FELDMAN: To have those cases which
12 say, for instance, if a man comes in and sues
13 for malpractice, he cannot on the one hand
14 sue for malpractice and on the other hand
15 keep his doctor, whom he is charging -- keep
16 the doctor from testifying. Those cases we
17 know.

18 We have in the Southern District a
19 case closely analogous to this, and that has
20 not been decided. It is still before the
21 Court -- Does the subject matter waive the
22 privilege, and the Court has indicated that
23 it does not. But, we have preliminary things
24 to take care of before we reach the rulings.

25 THE COURT: But that can only be

1
2 determined as to the aspect of the action,
3 and the privilege thought to be raised.

4 MR. FELDMAN: I was about to make that
5 point. I thought it would facilitate the
6 trial.

7 THE COURT: Well, I would rather at
8 this time continue to reserve on it, and then
9 as I hear testimony I can then determine
10 whether or not there has been a waiver.
11 Sitting where I am sitting, I think I would
12 be much better off.

13 MR. FELDMAN: I was going to make that
14 suggestion.

15 THE COURT: Maybe it will be academic.
16 It is according to how he testifies.

17 MR. FELDMAN: Right.
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2 N E D M I L L E R, having first been duly sworn by the
3 Clerk of the Court, took the witness stand and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FELDMAN:

7 Q Mr. Miller, you are the plaintiff in this
8 action?

9 A Yes, sir.

10 Q And are you familiar with a corporation known
11 as 1680 Coney Island Avenue Realty Corporation?

12 A Yes, sir.

13 Q What connection do you have with that corpor-
14 ation?

15 A I am the President.

16 Q Who owns all the stock in that corporation?

17 A I do.

18 Q Are you also familiar with a corporation
19 known as Miller Stormguard Corporation?

20 A Yes.

21 Q And what connection, if any, do you have
22 with Miller Stormguard Corporation?

23 A I am the President.

24 Q Who owns the stock of Miller Stormguard?

25 A At the present time?

2 Q No, the years in question, 1955, '56 and '57?

3 A I did.

4 Q Now, in 1957, Mr. Miller, did 1680 -- and I
5 will now refer to that corporation merely as 1680 -- did
6 1680 hold any directors' meetings you attended?

7 A Not that I know of.

8 Q Were you a director of 1680?

9 A Yes, sir.

10 Q Do you know who any of the other directors
11 were?

12 A My wife is Secretary.

13 Q Is she also a director?

14 A Yes, sir.

15 Q Any other directors?

16 A No, sir.

17 Q Did you and your wife hold any directors'
18 meetings of 1680 during 1957?

19 A I don't recall any.

20 Q During 1957, as far as you know, was any
21 dividend declared by 1680?

22 A No.

23 MR. ADLER: No. That goes to the issue
24 itself.

25 MR. FELDMAN: Yes, but I ask now if the

directors met and declared a dividend.

MR. ADLER: I ask it be stricken.

BY MR. FELDMAN:

Q In 1957, did 1680 hold a meeting?

A No.

Q And in '57, did you receive any dividends from 1680?

MR. ADLER: Objection. That goes to the ultimate question.

THE COURT: I will allow it, but it does go to the ultimate question.

MR. FELDMAN: It has to.

THE WITNESS: No.

BY MR. FELDMAN:

Q There came a time, Mr. Miller --

MR. FELDMAN: Withdrawn.

Q (continuing) I show you this check and ask you to look at the front and back, and tell me whether or not your signature appears on the check?

A Yes, sir.

Q Where does your signature appear, as far as the front of the check is concerned?

A My signature is on the bottom right-hand --

THE COURT: Are you the maker?

THE WITNESS: Yes.

THE COURT: On behalf of the corporation or individual?

THE WITNESS: 1680 Realty Corporation.

BY MR. FELDMAN:

Q Look at the back; do you say your signature appears?

A Yes, sir.

Q In the position of endorser?

A Yes, sir.

Q Are there any other endorsers on the check?

A Miller Stormguard Corporation.

MR. FELDMAN: I offer the check in evidence.

MR. ADLER: Would you provide the date of the check for the record?

MR. FELDMAN: I will.

MR. ADLER: No objection.

THE CLERK: Check marked in evidence as Plaintiff's Exhibit 1.

MR. FELDMAN: For the convenience of the Court, it is in the amount of \$65,000, December 16, 1957, and it shows it as paid December 19, 1957, through the clearing bank,

which in this particular case is the
Manufacturers' Trust Company, as it was then
known.

BY MR. FELDMAN:

Q Mr. Miller, who is David Rausch?

A He was my accountant and then my employee.

Q And do you see Mr. Rausch's handwriting anywhere on Exhibit 1 in evidence?

A I am not acquainted with his handwriting, but he made out the check, as far as I know.

Q Let me ask you this --

MR. ADLER: Objection.

THE COURT: Sustained.

MR. ADLER: I move that the witness's last answer be stricken. It is pure conjecture.

THE COURT: Yes.

BY MR. FELDMAN:

Q Mr. Miller, the words "Ned Miller" written in ink on Exhibit 1, are they in your handwriting?

MR. ADLER: Objection. The witness testified that he drew the check.

THE COURT: No. He said he was a maker of the check, a signator for the corporation.

Q So we are clear, there is a portion of the

check "pay to the order of Ned Miller." Is that in your handwriting?

A No, sir.

Q How long had David Rausch been an employee of Miller Stormguard?

A As an employee on or about 1952.

Q Before that, what was he?

A My accountant for over 30 years, up to the time of the termination.

Q In 1954, '55, '56, '57, did you draw checks?

A No.

Q Who had supervision of the books of Miller Stormguard?

A David Rausch.

Q And the checkbook of Stormguard?

A David Rausch.

Q Did you draw checks yourself?

A Never.

Q With regard to 1630, who supervised the books and records?

A David Rausch.

Q And the checks?

A David Rausch.

Q Did you write checks on 1680?

A Never.

Q Did there come a time, Mr. Miller, when your association with David Rausch changed?

A I did not hear that last word.

Q I apologize. I turned from you.

Did there come a time when your association with David Rausch changed?

A Yes, sir.

Q About when was that?

A About Labor Day, 1962.

Q Mr. Miller, did Mr. Rausch have a signature or signatory authority on the general checking account of Miller Stormguard?

A No, sir.

Q After Mr. Rausch left, did you find that Mr. Rausch had issued checks and signed on the Miller Stormguard account?

A I did.

Q Do you know to what extent he had done this?

A Over a half-million dollars' worth.

Q Did you ever locate that half-million dollars?

A Never.

Q Mr. Miller, did you call for an audit of your books by an independent auditor?

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A I did.

Q Who did you use?

A Mr. Milton Seikman.

Q Is he here?

A Yes.

Q Did he audit your books?

A He did.

Q Following that audit, did Mr. Seikman discover anything concerning the relationship of 1680 and the government of the United States with regard to the filing of income tax returns?

A I don't understand that.

Q Let me put it bluntly: was Mr. Rausch a CPA?

A Yes.

Q Who prepared the income tax returns of all your ventures?

A Mr. Rausch.

Q Of Stormguard?

A Absolutely.

Q Your personal tax returns?

A Even my daughter's.

Q And I assume Mrs. Miller, since you filed a joint return?

A Yes.

Q Now, with regard to 1680, did you discover during the course of Mr. Seikman's audit that 1680 had never filed an income tax return?

A So I have been told.

Q And when you learned that, what instructions if any did you give Mr. Seikman with regard to the government of the United States?

A What instructions? I told him to tell the government what was taking place. I didn't know what happened.

Q Following that, if you know, did Mr. Seikman communicate with the government?

A Yes.

Q Did the government then come in and do an audit?

A Yes, sir.

Q Was it as a result of this audit that the issue of the \$65,000 as a dividend arose?

A Yes, sir.

Q And you paid the assessment?

A They took it.

Q Out of your bank account?

A I just sold my house, and they took the money right out.

Q And you now claim for the return of that

1
2 payment?

3 A Yes.

4 Q I ask you again, did you in 1957 personally
5 receive any money from 1680?

6 A Never. Not through the whole life of 1680.

7 Q Did your wife personally receive money as
8 far as you know?

9 A No, sir.

10 MR. FELDMAN: Nothing further.

11 CROSS-EXAMINATION

12 BY MR. ADLER: **

13 Q I believe that Miller Stormguard was incor-
14 porated in 1947?

15 A A conglomeration of corporations and so on. It was
16 a change of name. The company was in business for about 50
17 years. There were changes in names, according to the product
18 being sold.

19 Q In 1947 --

20 A There was a --

21 Q 1680 Realty Corporation, did that come into
22 use in 1944?

23 A Yes.

24 Q Now, as I understand it, you were the Presi-
25 dent and sole owner of Miller Stormguard from 1947 to 1971?

1
2 A My own family; daughter and grandchildren.

3 Q Did you still own the remaining 55 percent?

4 A Yes.

5 Q So you owned 55 percent of the voting stock
6 today?

7 A Yes, sir, I do.

8 Q I believe that Mr. Rausch, from 1955 to 1962,
9 was Vice-President of Miller Stormguard?

10 A Yes, sir, I believe so.

11 Q And from 1955 to this date, sir, have you as
12 President of Miller Stormguard, been the Chief Executive
13 Officer of the company?

14 A Yes.

15 Q As Chief Executive Officer, have you had the
16 final decisions as to all phases of the business?

17 A Yes, sir.

18 Q 1955 to this date, sir, you, as President of
19 1680 Coney Island Realty Corporation, were the Chief
20 Executive Officer of that company?

21 A Yes, sir.

22 Q And as the Chief Executive Officer, you had
23 the final say as to all phases of the business?

24 A Yes, sir.

25 * Q You testified, sir, on direct examination that

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2 after you discharged Mr. Rausch, that with the aid of
3 Mr. Seikman a discovery was made that some \$500,000 worth
4 of checks were written on Miller Stormguard by Mr. Rausch,
5 although he was not an authorized signatory?

6 A Right.

7 Q Isn't it true that you were not able to
8 determine that Mr. Rausch actually issued any of those
9 checks to wrong parties?

10 A That is complicated, and I have to give a complicat-
11 ed answer.

12 I never knew that the people paid were not paid
13 by me. I was also signing checks as an officer of the
14 corporation. There was duplication. I could not verify,
15 and that is why I don't know what happened to the money.

16 Q You were signing checks?

17 A Yes, I was the only one entitled to sign checks
18 outside of my wife.

19 Q Is that Stormguard?

20 A Yes.

21 Q In 1955 to 1957, were you signing checks?

22 A Absolutely. All the time, I was signing checks.

23 Q And the realty account?

24 A I was the only one. My wife also had authorization.

25 Q I ask you again, after Mr. Seikman did his

1
2 audit, the half-million dollars worth of checks written on
3 the Stormguard account, for which Mr. Rausch was not
4 authorized -- you were not able to find out that any of
5 the checks were improperly written by Mr. Rausch?

6 A There were some checks given out to people whom he
7 had no right to give it to, and I wouldn't have given it
8 to them in the first place, but others were duplicates.
9 We could never get the books of the other corporations to
10 substantiate whether they were properly issued or not. I
11 had no chance to know they had received duplicate payment.

12 THE COURT: I think we will recess at
13 this point for lunch.*

14 (Luncheon recess taken.)

15 (continued on following page)
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it was much more than that.

MR. ADLER: Do you remember that testimony?

THE COURT: Here she is now.

MR. ADLER: Yes.

THE COURT: (Addressing reporter.)
What are the last two questions?

(Whereupon, the reporter read as directed.)

THE COURT: Okay.

MR. ADLER: Okay.

Will you resume the stand, please?

N E D M I L L E R, having been previously duly sworn,
resumed the witness stand and testified further
as follows:

CROSS-EXAMINATION

BY MR. ADLER (continuing):

Q The reporter just read back your last
answer, wherein you said that Mr. Rausch issued checks to
people that he had no right to give them to. Was that
your statement?

A Yes, sir.

Q All right. Now, in fact, after Mr. Seikman

1
2 had entered the picture, after Mr. Seikman had done his
3 audit, is it an accurate statement that neither you nor
4 Mr. Seikman were able to make heads nor tails of the whole
5 situation?

6 A That's true. I think -- might be.

7 Q Thank you.

8 Now, therefore, isn't it also a fact,
9 Mr. Miller, that neither you nor Mr. Seikman, as far as
10 you know, to your own knowledge, were ever able to develop
11 any proof to your own mind that these checks -- these
12 \$500,000 of checks -- were not written for valid business
13 purposes?

14 MR. FELDMAN: Your Honor, this is
15 argumentative. Just a moment. This is argu-
16 mentative. It may go either way.

17 THE COURT: He can answer it.

18 THE WITNESS: That is not so. I know
19 definitely for a fact that there were many
20 items which were in controversy here, many
21 items which were -- in my position, were
22 fraudulent all the way through.

23 And that's what we are doing right
24 now. We are still fighting.

25 Q That's your own position, isn't that right?

1
2 A Yes.

3 Q That's your own conjecture; isn't that
4 right?

5 A I don't know what the word "conjecture" means. That
6 is my opinion, yes, sir.

7 Q Mr. Miller, the year 1955, is it accurate
8 that a check for \$65,000 was issued by Miller Stormguard
9 Corporation to you personally?

10 A Yes, sir.

11 MR. ADLER: Mark this for identifica-
12 tion as Government's Exhibit 1.

13 THE CLERK: Document marked for iden-
14 tification as Defendant's Exhibit A.

15 BY MR. ADLER:

16 Q Mr. Miller, I show you a document marked
17 Defendant's Exhibit A. for Identification. Is this your
18 signature?

19 A Yes, sir.

20 MR. ADLER: I offer Defendant's Exhibit A
21 in evidence.

22 MR. FELDMAN: No objection.

23 THE COURT: All right.

24 THE CLERK: Defendant's Exhibit A
25 previously marked for identification now

Q But there was income earned on this investment?

A Yes.

Q You reported these earnings on your annual Federal Income Tax Return?

A I presume so. Yes, sir.

Q Mr. Miller, Plaintiff's Exhibit 1, which is in evidence -- this is the 1957 check from 1680 Coney Island Realty Corporation, made out to yourself, in which you have testified that you endorsed --

A Yes.

Q For the record, I am putting Plaintiff's Exhibit 1 in front of you now.

A Yes, sir.

Q All right. Now, at the time that you both signed this check and turned it over and endorsed it to the account of Miller Stormguard, did you understand that this was a repayment of the 1955 reported loan made by you from Miller Stormguard?

A All I know is that Mr. Rausch told me this was necessary, but I had to sign this in order to do it. And I did whatever he told me. He was the man that made all the decisions on all the finances.

Q Mr. Miller, do you recall that approximately

1
2 a year ago or so that you appeared in this building? Not
3 in this courtroom, of course, for the taking of your depo-
4 sition by myself representing the government?

5 A I remember you asked me some questions, yes, sir.

6 Q Do you remember that your answers were made
7 under oath?

8 A Yes, sir.

9 MR. ADLER: Page 21.

10 Q The question I asked you:

11 "Was it your understanding that by using
12 this check --"

13 This is referring to the 1957 check, Plain-
14 tiff's Exhibit 1.

15 "--and then endorsing it over to the Storm-
16 guard Company, that this was a repayment of a loan by
17 Stormguard to you?"

18 "Answer: Absolutely."

19 A I presume that's what it was.

20 Q Now, let me ask you the question, sir.

21 Was that answer that you gave, the "absolute-
22 ly" answer, correct, at the time you gave it?

23 A I presume that's -- I believe it to be the truth.

24 Q And that is a correct answer, now?

25 A All I know is --

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Q Would you answer my question?

A Sir?

Q Is it an accurate --

A You confuse me very badly at the time. And all I know, is, at this point the -- I am telling you that the man told me that this was a transfer of some kind, and that I had to do it that way. And I did whatever he told me to do."

MR. ADLER: I move to strike out the witness's answer as not being responsive.

THE COURT: It's not responsive. Listen to his question.

BY MR. ADLER:

Q Sir, I want to reread the --

THE COURT: What page?

MR. ADLER: Pages 21 and 22.

Q The question that I asked you and the answer that you gave me at this time under oath --

A Yes.

Q "Question: Was it your understanding that by using this check --" I am referring now to the 1957 check.

"--and then endorsing it over to the Storm-guard Company, that this was a repayment of a loan by

Q You received a few hundred dollars back?

A That's about all.

Q What did you do with that money?

A What did I do with that money? I presume I must have kept it.

Q I mean, in your own personal account?

A I presume so.

MR. ADLER: Your witness.

* REDIRECT EXAMINATION

BY MR. FELDMAN: *

Q At the same time, Mr. Miller, that you were examined by Mr. Adler, were you asked the following questions and did you give the following answers:

MR. FELDMAN: And I am reading from page 14.

Q "Question: Referring to the year 1955, I believe that during the course of that year there was a check issued from Stornaguard to you in the amount of \$65,000. Do you recall that?

"Answer: Yes, sir.

"Question: Do you have a copy of this check here?

"Mr. Frederick: We do not have that check. That disappeared. We have no idea where that one is.

"Answer: I can't find it.

1
2 "That's how I came to borrow it, and he gave
3 me the whole formula, as to how to work it out. He told me
4 I would have to sign a note and pay interest, which I
5 agreed, and I went through all the formula I was supposed
6 to go. I did whatever he told me."

7 Were you asked those questions and did you
8 give those answers?

9 A Absolutely.

10 Q Reading now from page 17:

11 "Question: I am referring to a document
12 which I believe your attorney, Mr. Frederick, has brought
13 with him this morning. This is a document dated June
14 third, 1955.

15 At the top it says '\$65,000 on demand.
16 Hereafter I promise to pay to the order of Miller Storm-
17 guard Corporation \$65,000 at' and then it gives the Coney
18 Island Avenue address, 'interest at 2½ percent per annum.'
19 Is this your signature, sir?"

20 "Answer: Yes, sir.

21 "Question: It says 'Ned Miller.'

22 "Answer: Right.

23 "Question: This interest at 2½ percent,
24 how is that determined, what interest rate were you to pay
25 on this?

"Answer: Mr. Rausch told me this was the proper rate to put down. Whatever he told me, I did."

Were you asked those questions and did you give those answers?

A Yes.

MR. FELDMAN: I ask counsel to concede that the document referred to in the section just read is now Defendant's Exhibit A in evidence.

MR. ADLER: Yes.

BY MR. FELDMAN:

2 Reading again from page 18:

"Question: At the time that you made this loan and signed the note and the letter of June third, 1955, what was your understanding as to how long this note was beginning to remain outstanding?

"Answer: Well, I had hoped to pay it off in a few years at the most. In fact I did make payments back from time to time. He asked me for money and I gave him monies.

"Question: Did you make the payments of the principal on this loan?

"Answer: I gave him everything he asked me. He asked me for monies on account. At one time I even took

1 the form of interest or principal, and he told me how much
2 he wanted, and I gave it to him. I told you, at one time I
3 issued a check that I took from a savings bank, a cashier's
4 check, and turned it over to the company, endorsed it over
5 to the company for part payment of whatever was due.
6

7 "Question: How much was that check for?

8 "Answer: I don't know. It was a number of
9 thousands of dollars. I can't remember exactly. It was
10 quite a substantial check."

11 Were you asked those questions and did you
12 give those answers?

13 A Correct, sir.

14 Q Mr. Miller, did you ever get one penny out
15 of that \$65,000 that was issued out of 1680 in 1957?

16 A Absolutely not. Not only that, I never got a penny
17 out of the 1680 Corporation since its inception -- since
18 the very beginning, not one dime ever came into my
19 pocket.

20 Q Now, let me ask you a question, Mr. Miller.
21 Did you ever see any books and records of 1680?

22 A No, sir.

23 Q Did you ever see any books and records of
24 Miller Stormguard?

25 A I never had any. I don't even look at them right

now. I don't know.

Q In 1955, '56, '57, right up to the time that you found out something about Mr. Rausch, who took care of those books and records?

A Mr. Rausch was the only man that took care of anything pertaining to finances, money or anything like that.

Q Did he handle all the financial decisions of your company?

A Yes, sir.

MR. FELDMAN: I have no further questions.

THE COURT: Just a moment. We will take a short recess.

(Recess taken.)

RECROSS EXAMINATION

BY MR. ADLER:

Q Mr. Miller, as I recall your testimony earlier in the afternoon, you testified that in 1955, when Miller Stormguard issued that check to you for \$65,000, that you took that check and made a personal investment in Pittsburgh Properties; is that right?

A Yes, sir.

Q At the time that you made that investment, that -- in that time in 1955, that would be a standing investment made by you; is that right; that's what you

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2 M I L T O N S E I ^T K M A N, called as a witness, being
3 duly sworn by the Clerk of the Court, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FELDMAN:

6 Q Mr. Seikman, you are a certified public
7 accountant, licensed in the State of New York?

8 A Yes, sir, I am.

9 Q You are certified in the State of New York?

10 A Yes.

11 Q For how long have you been a certified
12 public accountant?

13 A Since 1949.

14 Q Mr. Seikman, when for the first time did you
15 have anything to do with the company known as Miller Storm-
16 guard or 1680 Coney Island Avenue Realty Corporation?

17 A In 1962.

18 Q Briefly, what were the circumstances of
19 your becoming involved with them?

20 A I was recommended for this account by their insur-
21 ance company broker. I met Mr. Miller at his home and asked
22 him some pertinent questions. And at that time, within a
23 few days, I went down to the premises and started to do
24 an audit.

25 Q Did you ever meet a Mr. Rausch, a David

1
2 Rausch?

3 A Yes, I did.

4 Q Now, just so that I can get a certain phase
5 out of the way before we get down to the transactions that
6 we are primarily concerned with here, did you have
7 occasion to deal -- concerning Mr. Rausch -- with the
8 District Attorney's office in Brooklyn?

9 A Yes, sir, I did.

10 Q Was the subject matter of Mr. Rausch's
11 association with Mr. Miller the subject of an investigation
12 by the District Attorney in Brooklyn?

13 MR. ADLER: I object at this time. I think--

14 THE COURT: I don't know what this
15 has to do with the --

16 MR. ADLER: It has nothing to do
17 with the dividend situation.

18 Your Honor, I just mentioned it
19 since there is no jury present.

20 THE COURT: I understand. But it doesn't
21 make any difference.

22 MR. FELDMAN: Just to indicate that
23 this was not merely a --

24 THE COURT: It doesn't make any
25 difference.

MR. FELDMAN: All right.

Q Now, Mr. Seikman, did you have occasion to audit the books and records of 1680 Coney Island Realty Corporation when you came to do Mr. Miller's work?

A The records, yes.

Q Why do you distinguish between records and books and records?

A Because the only books that I was able to find were books that were begun at the beginning of the corporation and were never continued.

Q Did 1680 in fact have any books and records as of 1955?

A No.

Q '56, '57?

A No.

Q In the course of your audit of the affairs of 1680, did you have occasion to determine whether or not 1680 filed income tax returns?

A As far as I could see from the records, there were no income taxes paid.

Q And were there earnings in 1680?

A After a thorough investigation I determined that there were earnings, but without being able to determine the exact amount of them.

Q When did you first start your audit of 1680?
Approximately what year?

A In -- the end of '62 or beginning of '63.

Q Fine. I want to get a time span relationship.
Now, did you have occasion to audit the books
of Miller Stormguard?

A Yes, I did.

Q Was that about at the same time?

A Yes.

Q With regard to Miller Stormguard Corporation
did your audit determine who was involved with those
books and records?

A Yes, it did.

Q What did you determine?

A I determined that the control at that time was
David Rausch, and that he was in complete control of all
the records and books.

Q Incidentally, where were the checks of 1680
kept?

A I was able to find them strewn literally in various
spots, including his desk, and old files, various places
throughout his office.

Q So that you actually had to conduct a
physical search of the affairs of 1680, of its records,

1
2 to determine what records there were?

3 A Correct.

4 Q Now, with regard to Miller Stormguard when
5 you did your audit, did you determine or did you find out
6 who had signatory powers on the principal checking account
7 of the corporation?

8 A Yes, I did.

9 Q Who did have those signatory powers?

10 A The only one that had the signatory powers on the
11 general checking account was Mr. Miller and Mrs. Miller.

12 Q Was there any other accounts?

13 A Yes. There were very numerous accounts.

14 Q Did Mr. Rausch have a signature on any of
15 them?

16 A Yes, he did. On two accounts. One, a payroll
17 account, and another, a Miller Stormguard special account.

18 Q What was the special account used for?

19 A The special account was used at the time that
20 Mr. Miller was away on vacation or out of town for any
21 reason whatsoever, wherein Mr. Rausch had permission to
22 sign on this -- on these checks, so that the business could
23 continue in the absence of Mr. Miller.

24 Q I assume the payroll account was an ordinary
25 payroll account?

1
2 A The payroll was an ordinary payroll account.

3 Q Now, you have heard a lot of talk, I am sure,
4 concerning the transaction involving the issuance of a
5 \$65,000 check from 1680 to Mr. Miller, and I think the
6 check is in evidence here as Exhibit 1?

7 A Yes, I did.

8 Q Now, did you go to the books of Miller Storm-
9 guard to find out how that check was handled on the books
10 of Miller Stormguard?

11 A Yes, I did.

12 Q And do you have those books here?

13 A Yes.

14 Q Now, I assume that by this time, Mr. Seikman,
15 you have a fair degree of familiarity with this transaction,
16 don't you?

17 A Yes, I do.

18 Q All right. So that in order that we can cut
19 it short, and exactly how was this transaction handled?
20 1680 issued a check in December of '57, \$65,000. What was
21 then done with it, as far as the books and records were
22 concerned?

23 MR. ADLER: I object to the question.

24 It calls for hearsay. The records are
25 here.

THE COURT: He's going to look at the records now.

BY MR. FELDMAN:

Q All right. Do you want to look at the records?

THE COURT: I suggest that you go through the records, rather than have --

THE WITNESS: Well --

THE COURT: No.

THE WITNESS: All right.

THE COURT: You don't like that?

THE WITNESS: This check was deposited into the cash receipts of Miller Stormguard Corporation. The cash receipts book itself is not in existence any more. However, the postings from that cash receipts book went into the general ledger. And I was able to determine from that exactly what this was posted to.

BY MR. FELDMAN:

Q Let me interrupt you for a moment, Mr. Seikman. Was the cash receipts book missing at the very time you first came into Miller Stormguard?

A No, it wasn't.

Q What happened to it

A Well, there's been a number of attorneys that have been working on this case at various stages of the case and that book never came about.

Q But you can reconstruct the transaction from the ledger?

A Yes, I can.

Q Will you go to the ledger and tell us to what account was the \$65,000?

A The cash -- the cash was deposited into -- as a debit to the cash account. The credit went to an account called exchanges.

Here it is. No.

Q Would you look at the cash disbursements account and see whether or not you can find it?

A Well, from the cash disbursements account, that was -- yes, that will give me the page number. This is the account that the cash originally receipted was put in, as a receipt of part of \$161,000.

Q All right. Now at the same time, did -- at the same time that these transactions occurred, was there a loan account on the books for Mr. Miller?

A Yes, there was. That's here on page number three in the amount of \$65,000.

Q Did that loan receive any credit?

A No, it did not. ✓

Q So that the 1957, \$65,000, it was received by Miller Stormguard, did not appear at any time in the Miller loan accounts; is that right?

A No, it did not.

Q All right. And now, Mr. Rausch then issued a \$65,000 check at the same time that the December \$65,000 check was received?

A Yes, he did.

Q When --

MR. ADLER: Objection. Unless there is some foundation laid for the fact that the witness is aware of who issued that check, I move that the question and answer be stricken.

THE WITNESS: May I just add one thing? I am only saying it was he, for the simple reason that I examined so many of his check that I was quite certain as to his writing.

BY MR. FELDMAN:

Q In other words, the same writing on all the other checks that you saw --

1
2 A Right.

3 MR. ROLLER: I renew my objection.
4 The witness has not been shown as a hand-
5 writing expert.

6 MR. FELDMAN: We are not offering him
7 as a handwriting expert.

8 THE COURT: Well, if he says he saw
9 some similarity --

10 You saw some similarity in the --

11 THE WITNESS: The checks that he
12 wrote.

13 THE COURT: You believe it to be the
14 same hand?

15 THE WITNESS: Yes.

16 THE COURT: I will allow it for what-
17 ever it's worth.

18 BY MR. FELDMAN:

19 Q Was there a \$65,000 check issued at the same
20 time?

21 A Yes, there was.

22 Q To whom?

23 A It was made to Ned Miller.

24 Q In other words, if I understand this transac-
25 tion correctly, at the very same time as \$65,000 came into

1
2 Miller Stormguard and was credited to this exchange account,
3 Mr. Rausch issued a \$65,000 check to Ned Miller; is that
4 right?

5 A I would say, yes.

6 Q Right. Now, did he ever deliver that check
7 to Ned Miller?

8 A No, he did not.

9 Q Did you ever find the check?

10 A Yes, I did.

11 Q Where did you find it?

12 A Mr. Rausch's desk.

13 Q I show you this paper and ask you whether
14 this is the check that you found?

15 A Yes, it is.

16 Q Was that check ever signed by Mr. Miller?

17 A No, it was not.

18 MR. FELDMAN: I offer it in evidence.

19 MR. ADLER: No objection.

20 THE CLERK: Check marked in evidence
21 as Plaintiff's Exhibit number 2.

22 MR. FELDMAN: Thank you kindly.

23 BY MR. FELDMAN:

24 Q Mr. Seikman, here was a check which had been
25 written in the checkbook; is that right?

A Yes.

Q Exhibit 2. Never signed by Mr. Miller; is that right?

A Correct.

Q Never cleared through the bank?

A Never did.

Q Was it entered in the books?

A Yes, it was entered in the cash disbursements book as the last item for the year.

Q So that -- so far as anybody examining the books that were kept by Mr. Rausch, if this transaction were looked into, it was -- it would look as an ordinary exchange?

A Yes, sir.

MR. ADLER: Objection. It calls for a conjecture on the witness's part.

THE COURT: If he knows. I will take it as an accountant.

THE WITNESS: The answer is "yes." *

BY MR. FELDMAN:

Q And somebody would have to go to Mr. Miller to find out if Miller had gotten the \$65,000?

A Yes, he would.

Q So far as the books were concerned, this

1
2 would be forever. At the time in 1962 and
3 '63 when I was doing the work for him, it
4 became apparent that Pittsburgh Properties
5 at that point was failing or -- and that
6 something might have to be done about this
7 investment in Pittsburgh Properties, but it
8 was always his hope that it would be a
9 standing investment."

10 Now, the questions that I read to you, are
11 they accurate and are they your answers,
12 accurate?

13 THE WITNESS: Yes.

14 BY MR. ADLER:

15 Q You still agree with that today?

16 A Yes.

17 Q Sir, when you made your audit in 1962, I
18 believe that you discovered that on the principal account
19 of Stormguard, that only Mr. Miller and his wife were
20 authorized to sign checks; is that right?

21 A Yes. You're talking about the general, main
22 checking account?

23 Q Yes.

24 A Correct.

25 Q I believe that you -- I believe in spite of

1
2 this, you discovered that Mr. Rausch had written some
3 \$500,000 of checks on this general account; is that right?

4 A That's correct.

5 Q I believe that you made an attempt to audit
6 these checks?

7 A I did audit the checks.

8 Q And, sir, isn't it accurate that as far as
9 you are able to determine, that these checks were written
10 for a valid purpose?

11 A It was written for what was -- the answer is, yes.

12 MR. ADLER: No more questions.

13 REDIRECT EXAMINATION

14 BY MR. FELDMAN:

15 Q When you say, the answer is yes, with regard
16 to whether they were written for a valid purpose, did the
17 checks as issued by -- signed by Mr. Rausch, appear to be
18 valid on their face?

19 A On their face, they appeared to be valid, correct.

20 Q When you attempted to find out whether or not
21 they were in fact valid, were you ever able to determine
22 whether they were or were not?

23 A No, I was not able to determine out of all those
24 checks, whether they were all valid.

25 Q Were there checks written to persons who were

1
2 related to Mr. Rausch?

3 A There were, yes.

4 Q And did your audit disclose that Miller did
5 not know why these people weren't being paid?

6 A That's correct.

7 Q Did your -- did you determine that in certain
8 instances one account had been paid twice?

9 A Yes, I did.

10 Q Was there evidence indicating that the pay-
11 ments had been made which resulted in kickbacks?

12 A I was never able to determine that because of self-
13 incrimination that any of these checks were kickbacks.

14 Q But you attempted to find out?

15 A I attempted to find out, yes.

16 Q As a matter of fact, didn't you come into the
17 picture when one of the Miller suppliers complained to Mr.
18 Miller about a kickback that Mr. Rausch was demanding, or
19 something of that sort?

20 MR. ADLER: Objection. It calls for
21 hearsay.

22 THE COURT: Yes, I would say so.

23 BY MR. FELDMAN:

24 Q Do you recall the circumstances of who recom-
25 mended you to Mr. Miller?

1
2 A Yes, I do.

3 MR. ADLER: Objection.

4 Q Who did recommend you?

5 THE COURT: I think we had that before.

6 Some insurance --

7 MR. FELDMAN: Not whom.

8 THE WITNESS: Yes.

9 BY MR. FELDMAN:

10 Q Who recommended you to Mr. Miller?

11 A Mr. Levine.

12 Q Who is Mr. Levine?

13 A He is his insurance broker.

14 THE COURT: I know that.

15 Q Mr. Seikman, did Mr. Miller have other loan
16 accounts?

17 A Yes, he did.

18 Q And were payments made to those accounts and
19 recorded in the books of the corporation?

20 A Yes, they were, yes.

21 Q And you determined that this was not a loan,
22 that this was a dividend?

23 MR. ADLER: Objection. I don't under-
24 stand the --

25 THE COURT: I don't understand that.

BY MR. FELDMAN:

Q There came a time when this --

MR. FELDMAN: I will withdraw the question.

Q There came a time when this \$65,000--

MR. FELDMAN: I will withdraw that.

The \$65,000 loan remained on the books of Miller Stormguard to Mr. Miller and was there when you came in; is that right?

THE WITNESS: That's correct.

BY MR. FELDMAN:

Q What happened? Did there come a time when the loan was wiped out?

A Yes, there did.

Q When did that happen?

A That happened after the examination by Mr. Kreps.

Q Mr. Kreps being the Internal Revenue agent?

A That's correct.

Q And what caused that determination on his examination?

A After examining the 1680 set of the records that I had presented to him, he determined that the check for 1957 was to be construed as a dividend to Mr. Miller personally. And therefore the payment of the endorsement

1
2 by Mr. Miller back to Miller Stormguard represented a
3 repayment of the 1957 loan on the Miller Stormguard.

4 Q So far as you know, did Mr. Kreps have avail-
5 able to him any information other than what you have told
6 us here?

7 A As far as I know, no.

8 Q So it was purely on what we have now on the
9 record that Mr. Kreps determined that this was a dividend;
10 is that right?

11 MR. ADLER: Objection.

12 THE COURT: Well, he is asking him.

13 I will allow it.

14 BY MR. FELDMAN:

15 Q Is that right?

16 A Yes.

17 THE COURT: I will allow it.

18 MR. ADLER: Let me state my objection
19 for the record.

20 THE COURT: Sure.

21 MR. ADLER: It's a little bit different
22 than what I said before. I think the attempt
23 here is to try to impeach the agent's
24 determination.

25 MR. FELDMAN: Oh, no.

1
2 THE COURT: No, I didn't get it that
3 way.

4 MR. FELDMAN: That is my --

5 MR. ADLER: I object if that is the
6 purpose of the question.

7 THE COURT: I get it the other way
8 around, that the agent decided, well, it's
9 a good way to make a dividend, and that's
10 what I am going to declare it.

11 That's all I understand it as.

12 BY MR. FELDMAN:

13 Q Following that --

14 THE COURT: From his standpoint as
15 the person investigating the account and
16 finding no other reason for it, it probably
17 sounded very good at the time. I had to
18 decide now whether or not it was good. I
19 know where we are going, almost.

20 BY MR. FELDMAN:

21 Q And --

22 THE COURT: By tomorrow I may forget,
23 but right now I know.

24 BY MR. FELDMAN:

25 Q And did he also then disallow the interest

that Mr. Miller had in fact paid to Miller Stormguard?

A Yes. Two of the years.

Q For two of the years. So far as the statute of limitations --

A Permitted. Right.

Q At the time that you did --

THE COURT: He allowed some interest.

THE WITNESS: He had to allow some interest, because that was outside of the statute of limitations.

THE COURT: I understand. Is that the time that he declared it a loan, or declared it a dividend?

THE WITNESS: I don't recall.

THE COURT: On the \$65,000.

THE WITNESS: When he said, this is now a dividend, and this check now repays the original loan, therefore, there is no necessity to have interest --

THE COURT: Anymore.

THE WITNESS: Right. Therefore --

THE COURT: I understand.

THE WITNESS: The interest expense was invalid and was disallowed in two of the

years.

THE COURT: Two of the years. Because of the statute of --

THE WITNESS: Yes. It could have been gone back further, but it was disallowed because of the statute. It could only go for the two years of '61, I think it was.

THE COURT: All right, I understand.

MR. FELDMAN: No further questions.

THE COURT: All right, we will take a short recess.

(Recess taken.)

MR. FELDMAN: Your Honor, I have no further questions.

THE COURT: All right.

MR. ADLER: Just one or two.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. ADLER:

Q Mr. Seikman, you testified that Mr. Miller paid interest for certain years on the purported loan?

A Yes.

Q Is that right?

A Yes.

Take lpm#4
JB/elc

MR. ADLER: Well, just briefly.

It is clear from the law that whatever the allegations were and whatever inferences may be in the record as to Mr. Rausch's impropriety, in fact what happened in this case was that \$65,000 was originally taken out of Miller Stormguard Corporation and used by Mr. Miller for his own personal investment, for his own personal gain.

Income on that was reported by Mr. Miller on his personal tax return. It is, as Mr. Miller said, was done by him at Mr. Rausch's recommendation, which we don't think makes any difference because Mr. Miller did it as a way to invest excess funds that the corporation had in a long-term standing matter.

Mr. Seikman has testified that basically on his conversations with Mr. Miller, the following was true:

Number one, that so long as Pittsburgh Properties, that the investment existed, that there was no intention by Mr. Miller to

PLAINTIFFS' EXHIBIT 1 - CANCELLED CHECK - DATED
DECEMBER 16, 1957 - \$65,000

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES		DATE	AMOUNT
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> PLAINTIFFS EXHIBIT 1 END 690715 </div>			
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			
IF INCORRECT PLEASE RETURN NO R. CHECK NECESSARY			

1680 CONEY ISLAND AVENUE REALTY CORP. No. 683 35

BROOKLYN, N. Y. DEC 16 1957

PAY TO THE ORDER OF *Will Miller* \$65,000.00

1680 CONEY ISLAND AVENUE REALTY CORP.

MANUFACTURERS TRUST COMPANY
1505 AVENUE J
BROOKLYN, NEW YORK

Will Miller

1680 CONEY ISLAND AVENUE REALTY CORP.

PLAINTIFFS' EXHIBIT 2 - UNCANCELLED AND UNSIGNED
CHECK DATED DECEMBER 31, 1957 -
\$65,000

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES		DATE	AMOUNT
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> PLAINTIFFS EXHIBIT 2 69 CT 15 </div>			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			
IF NO RECEIPT RETURN PLEASE RETURN			
IF NO RECEIPT NECESSARY			

PAY TO THE ORDER OF <i>Chitry, McMillan and Co.</i> MANUFACTURERS TRUST COMPANY 1505 AVENUE J BROOKLYN, NEW YORK	MILLER STORMGUARD CORPORATION 1680 CONEY ISLAND AVENUE BROOKLYN, N. Y. 12/31 1957 \$65,000.00 SIXTY FIVE THOUSAND AND NO/100 DOLLARS	NO. 0522 11743 85
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PLAINTIFFS' EXHIBIT 3 - COPY FEDERAL INCOME TAX RETURNS
WITH DOCUMENTS ANNEXED FOR YEARS
1955, 1957, 1958, 1959, 1960, 1961
(1956 MISSING)

(REPRODUCED HEREIN AT PAGES 64a TO 96a)

PLAINTIFFS' EXHIBIT 3

FORM 1040-ES
U. S. Treasury Department
Internal Revenue Service

DECLARATION OF ESTIMATED INCOME TAX—1959

For calendar year 1959 or fiscal year ending _____, 19____

Name(s) NED MILLER
Address 2302 AVE N
BKLYN (Number and street or rural route) NY
(City, town, or post office) (Postal zone number) (State)

1. Your 1958 Income Tax \$ 983-; your estimate of 1959 Income Tax \$ 10,000 -
2. Estimated Income Tax withheld and to be withheld during entire year 1959 \$ 2,000 -
3. ESTIMATED TAX (line 1 less line 2) \$ 3,000 -
4. If this declaration is due to be filed on: (Please check)
☒ April 15, 1959, enter 1/4 of line 3; ☐ Sept. 15, 1959, enter 1/2 of line 3 }
☐ June 15, 1959, enter 1/3 of line 3; ☐ Jan. 15, 1960, enter amount on line 3 }
5. If you had an overpayment on your 1958 income tax return (line 20 (a), page 1) which you elected to have applied as a credit against your 1959 estimated tax, enter the amount here. 750 -
6. If you wish to apply the entire overpayment credit against your first installment, enter the amount on line 5 here. If you wish to apply the credit evenly against each installment, enter here the amount determined under instruction 4 . . .
7. Amount to be paid with this declaration (line 4 less line 6) \$ 750 -

I declare under the penalties of perjury that this declaration has been examined by me and to the best of my knowledge and belief is a true, correct, and complete declaration.

(Signature of taxpayer. If this is a joint declaration, it must be signed by both husband and wife)

(Date) _____, 19____

FORM 1124 (T)
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
REVISED JAN. 1955

NOTICE OF INSTALLMENT DUE ON ESTIMATED TAX TO AMEND ESTIMATE USE FORM ON REVERSE

ESTIMATED TAX \$ <u>500000</u>	ESTIMATED TAX \$ <u>05000000</u>	DATE DUE <u>11556</u>	
CREDITS FROM PRIOR YEAR	CREDITS FROM PRIOR YEAR		
PAYMENTS THIS YEAR <u>300000</u>	PAYMENTS THIS YEAR <u>0300000055110005022</u>	ACCOUNT NUMBER <u>1955</u>	
UNPAID BALANCE \$ <u>300000</u>	UNPAID BALANCE \$ <u>03000000</u>	INSTALLMENT DUE \$ <u>300000</u>	
YOUR ACCOUNT NUMBER <u>55110005022</u>		TAX PERIOD	
IMPORTANT Unless you wish to pay a larger portion of the unpaid balance shown above or file an amended declaration the INSTALLMENT DUE must be paid on or before the DATE DUE DETACH AND KEEP THIS STUB FOR YOUR RECORDS		NED MILLER 2302 AV N BKN NY	
IMPORTANT: TO INSURE PROPER CREDIT, RETURN THIS PART WITH YOUR REMITTANCE TO _____		DISTRICT DIRECTOR OF INTERNAL REVENUE 210 LIVINGSTON STREET BROOKLYN 1, NEW YORK	

FORM 1040-ES
U. S. Treasury Department
Internal Revenue Service

DECLARATION OF ESTIMATED TAX

1956

NAME (If this declaration is for a husband and wife, use first names of both) NED MILLER Social Security Numbers 55T-01-9466 Wife's
ADDRESS 2302 AVE N, BKLYN, NY

If this declaration is not for calendar year 1956, show here ending date of your fiscal year _____, 1957

1. Your 1955 Income Tax \$ 15360-; your estimate of 1956 Income Tax \$ 27,000 -
2. Estimated Income Tax withheld and to be withheld during entire year 1956 \$ 5,000 -
3. ESTIMATED TAX (line 1 less line 2) \$ 22,000 -
4. Less: Credit for 1955 overpayment if credit was elected on line 19, page 1, Form 1040, for 1955 \$ 0 -
5. If this is an amended declaration, enter payments made on account of prior declarations for this year \$ 0 -
6. Unpaid balance of ESTIMATED Tax (line 3 less the sum of lines 4 and 5) \$ 22,000 -
7. Amount paid with this declaration. (Read carefully Instruction 4) \$ 2,000 -

I declare under the penalties of perjury that this declaration has been examined by me and to the best of my knowledge and belief is a true, correct, and complete declaration.

(Signature of taxpayer or agent)

Dated 3/1/56, 1956

(If this is a joint declaration, it must be signed by both husband and wife)

PLAINTIFFS' EXHIBIT 3

FORM 1040 U. S. Treasury Department Internal Revenue Service	U. S. INDIVIDUAL INCOME TAX RETURN For Calendar Year or other taxable year beginning _____, 1955, and ending _____, 1955 <small>(Please type or print plainly)</small>		1955												
NAME (IF THIS IS A JOINT RETURN OF HUSBAND AND WIFE, USE FIRST NAMES OF BOTH) NED & FRANCES MILLER															
HOME ADDRESS (NUMBER AND STREET OR RURAL ROUTE) 2302 AVE N		(CITY OR POST OFFICE) BKLYN	(COUNTY) KINGS												
YOUR SOCIAL SECURITY NO. AND OCCUPATION 055-01-9461 EXECUTIVE		WIFE'S SOCIAL SECURITY NO. AND OCCUPATION _____													
If Income Was All From Wages, Use Pages 1 and 2 Only. If Such Income Was Less Than \$5,000, You May Need to Use Page 1 Only. See Page 3 of the Instructions.															
Exemptions	1. Check blocks which apply. Check for wife if she had no income or her income is included in this return. <table style="float: right; margin-left: 20px;"> <tr> <td>Regular \$600 exemption</td> <td><input checked="" type="checkbox"/> Yourself</td> <td><input type="checkbox"/> Wife</td> </tr> <tr> <td>65 or over at end of taxable year</td> <td><input type="checkbox"/> Yourself</td> <td><input type="checkbox"/> Wife</td> </tr> <tr> <td>Blind at end of taxable year</td> <td><input type="checkbox"/> Yourself</td> <td><input type="checkbox"/> Wife</td> </tr> </table> Enter number of boxes checked → 2			Regular \$600 exemption	<input checked="" type="checkbox"/> Yourself	<input type="checkbox"/> Wife	65 or over at end of taxable year	<input type="checkbox"/> Yourself	<input type="checkbox"/> Wife	Blind at end of taxable year	<input type="checkbox"/> Yourself	<input type="checkbox"/> Wife			
Regular \$600 exemption	<input checked="" type="checkbox"/> Yourself	<input type="checkbox"/> Wife													
65 or over at end of taxable year	<input type="checkbox"/> Yourself	<input type="checkbox"/> Wife													
Blind at end of taxable year	<input type="checkbox"/> Yourself	<input type="checkbox"/> Wife													
	2. List names of your children who qualify as dependents; give address if different from yours. JOAN SUSAN Enter number of children listed → 2														
	3. Enter number of exemptions claimed for other persons listed at top of page 2..... 2														
	4. Enter the total number of exemptions claimed on lines 1, 2, and 3..... 6														
Income	5. Enter all wages, salaries, bonuses, commissions, and other compensation received in 1955, before payroll deductions. Outside salesmen and persons claiming traveling, transportation, or reimbursed expenses, see instructions, page 5. <table style="width: 100%;"> <tr> <td>Employer's Name</td> <td>Where Employed (City and State)</td> <td>Wages, etc.</td> <td>Income Tax Withheld</td> </tr> <tr> <td>MILLER-STORMGUARD CORP</td> <td>BKLYN, NY</td> <td>\$54,000 -</td> <td>\$9,541.60</td> </tr> <tr> <td colspan="2"></td> <td>Enter totals here → \$54,000 -</td> <td>\$9,541.60</td> </tr> </table>			Employer's Name	Where Employed (City and State)	Wages, etc.	Income Tax Withheld	MILLER-STORMGUARD CORP	BKLYN, NY	\$54,000 -	\$9,541.60			Enter totals here → \$54,000 -	\$9,541.60
Employer's Name	Where Employed (City and State)	Wages, etc.	Income Tax Withheld												
MILLER-STORMGUARD CORP	BKLYN, NY	\$54,000 -	\$9,541.60												
		Enter totals here → \$54,000 -	\$9,541.60												
	6. Less: Excludable "Sick Pay" in line 5 (See instructions, page 5. Attach required explanation.)..... \$26,000 -														
	7. Balance (line 5 less line 6).....														
	8. Profit (or loss) from business (from separate Schedule C).....														
	9. Profit (or loss) from farming (from separate Schedule F).....														
	10. Other income (or loss) from page 3..... 1,002.33														
	11. ADJUSTED GROSS INCOME (sum of lines 7, 8, 9, and 10)..... \$55,002.33														
Special computation	Unmarried or legally separated persons qualifying as "Head of Household," see instructions, page 14, and check here <input type="checkbox"/> Widows and widowers who are entitled to the special tax computation, see instructions, page 14, and check here <input type="checkbox"/>														
IF INCOME ON LINE 11 IS UNDER \$5,000, AND YOU DO NOT ITEMIZE DEDUCTIONS, USE TAX TABLE ON PAGE 16 OF INSTRUCTIONS. IF INCOME WAS \$5,000 OR MORE, OR IF YOU ITEMIZE DEDUCTIONS, COMPUTE YOUR TAX ON PAGE 2.															
Tax due or refund	12. Enter tax from the Tax Table, or from line 9, page 2. Please check if you use Tax Table <input type="checkbox"/> ... \$15,360 -														
	13. (a) Dividends received credit (line 5 of Schedule J).... \$..... (b) Retirement income credit (line 12 of Schedule K).... \$.....														
	14. Balance (line 12 less line 13)..... \$15,360 -														
	15. Enter your self-employment tax from separate Schedule C or F..... \$15,360 -														
	16. Sum of lines 14 and 15..... \$15,360 -														
	17. (a) Tax withheld (line 5 above). Attach Forms W-2 (Copy B)..... \$9,541.60 (b) Payments and credits on 1955 Declaration of Estimated Tax (See instructions, page 13.) 3,000 - District Director's office where paid BKLYN, NY														
	18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the balance here. Send this balance with your return to "Internal Revenue Service." If less than \$1.00, do not report. \$7,818.40														
	19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the overpayment here. If less than \$1.00, it will be refunded only upon application. See instructions, page 15. \$														
Enter amount of line 19 you want: Credited on 1956 estimated tax \$.....; Refunded \$.....															
Is your wife (husband) making a separate return for 1955? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," write her (his) name.		Did you pay or agree to pay anyone for assistance in the preparation of your return? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," enter his name and address.													
Do you owe any Federal tax for prior years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No															
Taxpayer sign here	I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.														
Preparer (other than taxpayer) sign here	To assure joint income benefits, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN. I declare under the penalties of perjury that I prepared this return for the persons named herein, and that this return (including any accompanying schedules and statements) is, to the best of my knowledge and belief, a true, correct, and complete return based on all the information relating to the matters required to be reported in this return of which I have any knowledge.														
	130 CLINTON ST BKLYN, NY 3/23/56 (Individual or Firm Signature) (Address) (Date)														

EXEMPTIONS FOR PERSONS OTHER THAN YOUR WIFE AND CHILDREN

Name	Relationship	Did dependent live in your home?	Did dependent have gross income of \$600 or more?	Amount YOU spent for dependent's support. If 100% write "ALL"	Amount spent by OTHERS including dependent from own funds
TILLIE COWAN	MOTHER-IN-LAW	No	No	\$ ALL	\$
2701 AVE B, BILLY, NY					
LILLIAN MILLER	SISTER-IN-LAW	No	No	ALL	
161 NORWICH AVE, MIAMI, FLA					

Enter on line 3, page 1, the number of exemptions claimed above.

→ If an exemption is based on a multiple-support agreement of a group of persons, attach information described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION

If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize

Describe deductions and state to whom paid. If more space is needed, attach additional sheets. Please put your name and address on any attachments.

Contributions	TEMPLE ANAVATH SHOLOM	1,570.50	
	UNITED JEWISH APPEAL	1,400.00	
	UNION OF AMER. METHOD. CONGREGATIONS	100.00	
	SUNDAY CHARITIES	250.00	
Total Contributions (not to exceed 20 percent of line 11, page 1, except in special cases described on page 11 of instructions)			\$ 3,320.50
Interest	TREASURER OF THE U.S.	843.52	
	MILLER-STORMGUARD CORP	614.52	
	FLATBUSH SAVINGS BANK	45.00	
Total			1,503.04
Taxes	NYC REAL ESTATE	1,893.92	
	NYC INCOME TAX	2,260.46	
	NYC SALES	226.32	
Total			4,380.70
Medical and dental expense (If 65 or over, see instructions, page 12)	Submit itemized list. Do not enter any expense compensated by insurance or otherwise.		
	1. Cost of medicines and drugs, in excess of 1 percent of line 11, page 1	\$	
	2. Other medical and dental expenses	\$	
	3. Total	\$	
	4. Enter 3 percent of line 11, page 1	\$	
Child care	Expenses for care of children and certain other dependents not to exceed \$600 (See page 13 of instructions and attach statement)		
	Total losses (not compensated by insurance or otherwise)		
Losses from fire, storm, or other casualty, or theft			
	Total losses (not compensated by insurance or otherwise)		
Miscellaneous			
	Total		
TOTAL DEDUCTIONS (Enter on line 2 of Tax Computation, below)			\$ 9,902.23

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

1. Enter Adjusted Gross Income from line 11, page 1	\$ 55,002.23
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is \$5,000 or more: (a) married persons filing separately enter \$500; (b) all others enter 10 percent of line 1, but not more than \$1,000.	9,902.23
3. Balance (line 1 less line 2)	\$ 45,099.99
4. Multiply \$600 by total number of exemptions claimed on line 4, page 1	2,600.00
5. TAXABLE INCOME (line 3 less line 4)	\$ 42,499.99
6. Tax on amount on line 5. Use appropriate Tax Rate Schedule on page 14 of instructions.	\$ 1,526.00
7. If you had capital gains and the alternative tax applies, enter the tax from separate Schedule D	\$
8. Tax credits. If you itemized deductions, enter:	
(a) Credit for income tax payments to a foreign country or U. S. possession (Attach Form 1116)	\$
(b) Income tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest	\$
9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 8	\$ 1,526.00

PLAINTIFFS' EXHIBIT 3

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2.

Page 3

Schedule A.—INCOME FROM DIVIDENDS

1. Name of qualifying corporation declaring dividend (See instructions, page 6, for definition of qualifying corporation):

AMERICAN-PALESTINE TRADING

Amount

\$ 25-

2. Total.....

\$ 25-

3. Exclusion of \$50 (If both husband and wife received dividends, each is entitled to exclude not more than \$50 of his (her) dividends).....

50 -

4. Enter excess, if any, of line 2 over line 3.....

\$ NONE

5. Name of nonqualifying corporation declaring dividend:

6. Enter total of lines 4 and 5.....

\$ NONE

Schedule B.—INCOME FROM INTEREST

Name of payer	Amount	Name of payer	Amount
KINGS HIGHWAY SAVINGS	\$ 204.78	SOUTH BIKIN SAVINGS	\$ 276.47
DINE SAVINGS	460.25	PITTSBURGH PROPERTIES Co	573.35
LINCOLN SAVINGS	226.77		

Enter total here→

2,041.52

Schedule D Summary.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1. From sale or exchange of capital assets (from separate Schedule D).....
2. From sale or exchange of property other than capital assets (from separate Schedule D).....

Schedule E.—INCOME FROM PENSIONS OR ANNUITIES (See instructions, page 8)

Part I.—General Rule

1. Investment in contract.....	\$	4. Amount received this year.....	\$
2. Expected return.....	\$	5. Amount excludable (line 4 multiplied by line 3).....	
3. Percentage of income to be excluded (line 1 divided by line 2).....	%	6. Taxable portion (excess, if any, of line 4 over line 5).....	

Part II.—Where your cost will be recovered within three years and your employer has contributed part of the cost

1. Cost of annuity (amounts paid in)....	\$	4. Amount received this year.....	\$
2. Cost received tax-free in past years...		5. Taxable portion (excess, if any, of line 4 over line 3).....	
3. Remainder of cost (line 1 less line 2) ..	\$		

Schedule G.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation (attach in Sch. 1) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
	\$	\$	\$	\$
1. Totals.....	\$	\$	\$	\$
2. Net profit (or loss) (column 2 less sum of columns 3, 4, and 5).....				

Schedule H.—INCOME FROM PARTNERSHIPS, ESTATES, TRUSTS, AND OTHER SOURCES

1. Partnership (Name and address).....	PITTSBURGH PROPERTIES Co	LOSS
2. Estate or trust (Name and address).....	7 PARK AVE NYC	
3. Other sources (state nature).....		

Total Income (or loss) from above sources (Enter here and on line 10, page 1).....

\$ 1,002.23

Schedule I.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE G

1. Kind of property (If buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed (or allowable) in prior years	5. Method of computing depreciation	6. Rate (%) or life (years)	7. Depreciation for this year
		\$	\$			\$

FORM 1040
U. S. Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN—1958
1958, Ending 195.
(PLEASE TYPE OR PRINT)

Name NED + FRANCES MILLER
(If this is a joint return of husband and wife, use first names and middle initials of both)

Home address 2302 AVE N
(Number and street or rural route)

BKLYN NY
(City, town, or post office) (Postal zone number) (State)

Year Social Security Number 055 01 9461 Occupation EXECUTIVE Wife's Social Security Number _____ Occupation _____

If Income Was All From Salaries and Wages, Use Pages 1 and 2 Only. See Page 3 of the Instructions.

Exemptions

1. Check blocks which apply. (a) Regular \$600 exemption. ☒ Yourself ☐ Wife
(b) Additional \$600 exemption if 65 or over at end of taxable year. ☐ Yourself ☐ Wife
(c) Additional \$600 exemption if blind at end of taxable year. ☐ Yourself ☐ Wife
Enter number of exemptions checked 2

2. List first names of your children who qualify as dependents; give address if different from yours. JOAN
SUSAN
Enter number of children listed 2

3. Enter number of exemptions claimed for other persons listed at top of page 2. 2

4. Enter the total number of exemptions claimed on lines 1, 2, and 3. 6

Income

5. Enter all wages, salaries, bonuses, commissions, tips, and other compensation before payroll deductions (including any excess of expense account or similar allowance paid by your employer over your ordinary and necessary business expenses. See instructions, pp. 3-4.)

Employer's Name	Where Employed (City and State)	(a) Wages, etc.	(b) Income Tax Withheld
<u>MILLER-STORM GUARD CORP</u>	<u>BKLYN, NY</u>	<u>\$ 39,000 -</u>	<u>\$ 2,004 40</u>
Enter totals here		<u>\$ 39,000 -</u>	<u>\$ 2,004 40</u>

6. Less: Excludable "Sick Pay" in line 5 (See instructions, page 7. Attach required statement). \$ 39,000 -

7. Balance (line 5 less line 6). \$ 39,000 -

8. Profit (or loss) from business from separate Schedule C. ♦

9. Profit (or loss) from farming from separate Schedule F. ♦

10. Other income (or loss) from page 3 (dividends, interest, rents, pensions, etc.). 3,552 37

11. **ADJUSTED GROSS INCOME** (sum of lines 7, 8, 9, and 10). \$ 42,552 37

If either you or your wife had more than one employer and the social security tax (FICA) withheld from wages exceeded \$94.50, see instructions, page 5.

Unmarried or legally separated persons qualifying as "Head of Household," see instructions, page 7, and check here ☐ Widows and widowers with dependent child who are entitled to the special tax computation, see instructions, page 8, and check here ☐

Tax due or refund

12. Tax on income on line 11. (If line 11 is under \$5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions to find your tax and check here ☐. If line 11 is \$5,000 or more, or if you itemize deductions, compute your tax on page 2 and enter here the amount from line 9, page 2.) \$ 9,883 -

13. (a) Dividends received credit from line 5 of Schedule J. \$
(b) Retirement income credit from line 12 of Schedule K. \$ 9,883 -

14. Balance (line 12 less line 13). \$ 9,883 -

15. Enter your self-employment tax from separate Schedule C or F. \$ 9,883 -

16. Sum of lines 14 and 15. \$ 19,766 -

17. (a) Tax withheld (line 5 above). Attach Forms W-2, Copy B. \$ 2,004 40
(b) Payments and credits on 1958 Declaration of Estimated Tax (See page 8, instructions.) \$ 2,260 -

District Director's office where paid BKLYN, NY

18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the **BALANCE DUE** here \$ 6,786 00
Pay in full with this return to "Internal Revenue Service." If less than \$1.00, file return without payment.

19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the **OVERPAYMENT** here \$
If less than \$1.00, the overpayment will be refunded only upon application.

20. Amount of line 19 to be: (a) Credited on 1959 estimated tax \$ 0 (b) Refunded \$ 0

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☐ Yes ☒ No (See page 8, instructions.)
If "Yes," did you submit an itemized accounting of expenses to your employer? ☐ Yes ☒ No

County in which you live. KINGS Is your wife (husband) filing a separate return for 1958? ☐ Yes ☒ No If "Yes," enter her (his) name. _____ Do you owe any Federal tax for years before 1958? ☐ Yes ☒ No

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has any knowledge.

Sign here (Taxpayer's signature and date) _____ (If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN) (Wife's signature and date) 3/23/59
ROUSCH & EHRLICH
130 CLINTON STREET
BROOKLYN 1, NEW YORK
(Date) 3/23/59
(70-10-10007 1)

PLAINTIFFS' EXHIBIT 3

Form 1040-1958 EXEMPTIONS FOR

Name	Relationship	Months lived in your home. If born or died during year also enter "B" or "D"	Did dependent have gross income of \$500 or more?	Amount YOU for which dependent's support. If 100% write "All"	Amount paid for dependent's support. If 100% write "All"
LILLIE COWAN	MOTHER-IN-LAW	0	No	\$ All	\$
LILLIAN MILLER	SISTER-IN-LAW	0	No	All	\$

Enter on line 3, page 1, the number of exemptions claimed above.

→ If an exemption is based on a multiple-support agreement of a group of persons, attach information described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION

If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize. State to whom paid. If necessary write more than one item on a line or attach additional sheets. Please put your name and address on any attachments.

Contributions	SEE SCHEDULE ATT		
	Total paid but not to exceed 20% of line 11, page 1, except as described on page 8 of instructions...		\$ 2,150.00
Interest	MILLER-STANDARD CORP 1.65%		
	NYS TAX COMMISSION W.Y.V		
	Total Interest		1,650.00
Taxes	NYS INCOME 1,836.-		
	NYC REAL ESTATE 2,111.03		
	NYC SALES 771.59		
	Total taxes		4,718.62
Medical and dental expense (If 65 or over, see instructions, page 10)	Submit itemized list. Do not enter any expense compensated by insurance or otherwise		
	1. Cost of medicines and drugs IN EXCESS of 1 percent of line 11, page 1		\$
	2. Other medical and dental expenses		\$
	3. Total		\$
	4. Enter 3 percent of line 11, page 1		
Other Deductions (See page 10 of instructions and attach information required)	SAFE DEPOSIT BOX RENTAL 33.-		
	Total		33.-
TOTAL DEDUCTIONS (Enter here and on line 2 of Tax Computation, below)			\$ 8,052.37

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

1. Enter Adjusted Gross Income from line 11, page 1	\$ 42,572.37
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is \$5,000 or more: (a) a married person filing a separate return enter \$500, (b) all others enter 10 percent of line 1, or \$1,000, whichever is smaller.	8,052.37
3. Balance (line 1 less line 2)	34,500.-
4. Multiply \$600 by total number of exemptions claimed on line 4, page 1	3,600.-
5. TAXABLE INCOME (line 3 less line 4)	30,900.-
6. Tax on amount on line 5. Use appropriate tax rate schedule on page 15 of instructions. Do not use Tax Table on page 16.	9,883.-
7. If you had capital gains and the alternative tax applies, enter the tax from separate Schedule D.	
8. Tax credits. If you itemized deductions, enter: (a) Credit for income tax payments to a foreign country or U. S. possession (Attach Form 1116) \$ (b) Tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest. (c) Total. Enter here →	
9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 8(c).	\$ 9,883.-

670-10-74567-1 GPO

PLAINTIFFS' EXHIBIT 3

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 & 2

Schedule A.—INCOME FROM DIVIDENDS (Income from Savings (Building) and Loan Associations and Credit Unions should be entered as interest in Schedule B)

1. Name of qualifying corporation declaring dividend (See instructions, page 11): (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)	Amount
H - AMERICAN PALESTINE TRADING	\$ 25-
2. Total	\$ 25-
3. Exclusion of \$50 (If both husband and wife received dividends, each is entitled to exclude not more than \$50 of his (her) own dividends)	\$ 25-
4. Excess, if any, of line 2 over line 3. Enter here and on line 1, Schedule J	\$ NONE
5. Name of nonqualifying corporation declaring dividend:	
6. Enter total of lines 4 and 5	\$ NONE

Schedule B.—INCOME FROM INTEREST

Name of payer	Amount	Name of payer	Amount
SEE SCHED ATT	\$		\$
Enter total here → \$ 1,987			

Schedule D Summary.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1. From sale or exchange of capital assets (from separate Schedule D)	
2. From sale or exchange of property, other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PENSIONS AND ANNUITIES (See instructions, page 12)

Part I.—General Rule			
1. Investment in contract	\$	4. Amount received this year	\$
2. Expected return	\$	5. Amount excludable (line 4 multiplied by line 3)	
3. Percentage of income to be excluded (line 1 divided by line 2)	%	6. Taxable portion (excess of line 4 over line 5)	
Part II.—Where your cost will be recovered within three years and your employer has contributed part of the cost			
1. Cost of annuity (amounts you paid)	\$	4. Amount received this year	\$
2. Cost received tax-free in past years		5. Taxable portion (excess, if any, of line 4 over line 3)	
3. Remainder of cost (line 1 less line 2)	\$		

Schedule G.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation (explain in Sch. I) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
	\$	\$	\$	\$
1. Totals	\$	\$	\$	\$
2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)				

Schedule H.—OTHER INCOME

1. Partnerships (name and address)	PITTSBURGH PROPERTIES CO.	1,354 10
2. Estates or trusts (name and address)	2 PARK AVE	
3. Other sources (state nature)	NYC IL	
Total income (or loss) from above sources (Enter here and on line 10, page 1)		\$3,552 37

670-10-74687-1

PLAINTIFFS' EXHIBIT 3

NED + FRANCES MILLER
2302 AVE N
BKLYN, NY

1956

INCOME FROM INTEREST
FORM 1040 SCHED B

SAVINGS BANKS:

DIME	32210
KINGS HIGHWAY	71006
SOUTH BROOKLYN	42910
STATE OF ISRAEL BONDS	90-
PITTSBURGH PROPERTIES CO	114699
TOTAL	<u>719825</u>

CHARITABLE CONTRIBUTIONS
FORM 1040 PAGE 2

JULIA NEUMANN SCHOLARSHIP FUND	50-
TEMPLE HAVATH SHOLOM	96250
NY BOARD OF RABBIS	20-
NAT'L CONFERENCE OF CHRISTIANS + JEWS	50-
JEWISH CHATHAMVA	25-
UNION OF AMERICAN HEBREW CONGREGATIONS	100-
UNITED JEWISH APPEAL	510-
BKLYN JEWISH COMMUNITY COUNCIL	50-
FEDERATION OF JEWISH PHILANTHROPIES	255-
SUNDRY ORGANIZATIONS	118-
TOTAL	<u>715050</u>

FORM **1040**U. S. Treasury Department
Internal Revenue Service**U. S. INDIVIDUAL INCOME TAX RETURN—1958**or Other Taxable Year Beginning 1958, Ending 1958.
(PLEASE TYPE OR PRINT)Name NED & FRANCES MILLER
(If this is a joint return of husband and wife, use first names and middle initials of both)Home address 2302 AVE N
(Number and street or rural route)BKLYN
(City, town, or post office)

(Postal zone number)

NY
(State)

Your Social Security Number

055 01 9461

Occupation

EXECUTIVE

Wife's Social Security Number

Occupation

If Income Was All From Salaries and Wages, Use Pages 1 and 2 Only. See Page 3 of the instructions.

Exemptions

1. Check blocks which apply. (a) Regular \$600 exemption ☒ Yourself ☐ Wife Enter number of exemptions checked 2
(b) Additional \$600 exemption if 65 or over at end of taxable year ☐ Yourself ☐ Wife
(c) Additional \$600 exemption if blind at end of taxable year ☐ Yourself ☐ Wife
2. List first names of your children who qualify as dependents; give address if different from yours. JOAN Enter number of children listed 2
SUSAN
3. Enter number of exemptions claimed for other persons listed at top of page 2 2
4. Enter the total number of exemptions claimed on lines 1, 2, and 3 6

Income

5. Enter all wages, salaries, bonuses, commissions, tips, and other compensation before payroll deductions (including any excess of expense account or similar allowance paid by your employer over your ordinary and necessary business expenses. See instructions, pp. 5-6.)
- | Employer's Name | Where Employed (City and State) | (a) Wages, etc. | (b) Income Tax Withheld |
|--------------------------------|---------------------------------|--------------------|-------------------------|
| <u>MILLER-STORM GUARD CORP</u> | <u>BKLYN, NY</u> | <u>\$ 39,000 -</u> | <u>\$ 7,004.40</u> |
| Enter totals here | | <u>\$ 39,000 -</u> | <u>\$ 7,004.40</u> |
6. Less: Excludable "Sick Pay" in line 5 (See instructions, page 7. Attach required statement.) \$ 39,000 -
7. Balance (line 5 less line 6) \$ 39,000 -
8. Profit (or loss) from business from separate Schedule C \$ 3,552.37
9. Profit (or loss) from farming from separate Schedule F \$ 42,552.37
10. Other income (or loss) from page 3 (dividends, interest, rents, pensions, etc.) \$ 42,552.37
11. ADJUSTED GROSS INCOME (sum of lines 7, 8, 9, and 10) \$ 42,552.37

Tax due or refund

- Unmarried or legally separated persons qualifying as "Head of Household," see instructions, page 7, and check here ☐ Widows and widowers with dependent child who are entitled to the special tax computation, see instructions, page 8, and check here ☐
12. Tax on income on line 11. (If line 11 is under \$5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions to find your tax and check here ☐. If line 11 is \$5,000 or more, or if you itemize deductions, compute your tax on page 2 and enter here the amount from line 9, page 2.) \$ 9,883 -
- If income was all from wages, omit lines 13 through 16
13. (a) Dividends received credit from line 5 of Schedule J \$ 9,883 -
(b) Retirement income credit from line 12 of Schedule K \$ 9,883 -
14. Balance (line 12 less line 13) \$ 9,883 -
15. Enter your self-employment tax from separate Schedule C or F \$ 9,883 -
16. Sum of lines 14 and 15 \$ 9,883 -
17. (a) Tax withheld (line 5 above). Attach Forms W-2, Copy B. \$ 7,004.40
(b) Payments and credits on 1958 Declaration of Estimated Tax (See page 8, instructions.) \$ 2,250 -
District Director's office where paid BKLYN, NY
18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the BALANCE DUE here \$ 6,286.00
Pay in full with this return to "Internal Revenue Service." If less than \$1.00, file return without payment.
19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the OVERPAYMENT here \$ 0.00
If less than \$1.00, the overpayment will be refunded only upon application.
20. Amount of line 19 to be: (a) Credited on 1959 estimated tax \$ 0.00 (b) Refunded \$ 0.00

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☐ Yes ☒ No (See page 6.)
If "Yes," did you submit an itemized accounting of expenses to your employer? ☐ Yes ☒ No (See instructions.)

County in which you live.

KINGSIs your wife (husband) filing a separate return for 1958? ☐ Yes ☒ No If "Yes," enter her (his) name.Do you owe any Federal tax for years before 1958? ☐ Yes ☒ No

I declare under the penalties of perjury that this return including any accompanying schedules and statements has been examined by me and to the best of my knowledge and belief it is true, correct, and complete. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has any knowledge.

Sign here

(Taxpayer's signature and date)

(If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN)

(Wife's signature and date)

ROUSCH & ENRICH135 CONVENT STREETBROOKLYN 1, NEW YORK

(Date)

3/23/59

PLAINTIFFS' EXHIBIT 3

Form 1040-1958 EXEMPTIONS FOR PERSONS OTHER THAN YOUR WIFE AND CHILDREN

Page 2

Name	Relationship	Months lived in your home. If born or died during year also write "S" or "D"	Did dependent have gross income of \$600 or more?	Amount YOU furnished for dependent's support. If 100% write "All"	Amount furnished by OTHERS including dependent
TILLIE COWAN	MOTHER-IN-LAW	0	No	\$ ALL	\$
LILLIAN MILLER	SISTER-IN-LAW	0	No	ALL	

Enter on line 3, page 1, the number of exemptions claimed above.

→ If an exemption is based on a multiple-support agreement of a group of persons, attach information described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION

If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize State to whom paid. If necessary write more than one item on a line or attach additional sheets. Please put your name and address on any attachments.

SEE JOINED ATT		
Contributions		
Total paid but not to exceed 20% of line 11, page 1, except as described on page 8 of instructions		\$ 2,150.00
MILLER-SPRINGGUARD CORP		1,600.00
NYS TAX COMMISSION		550.00
Interest		
Total interest		1,650.00
NYS INCOME		1,836.00
NYC REAL ESTATE		2,111.00
NYC SALES		771.59
Taxes		
Total taxes		4,718.69
Medical and dental expense	Submit itemized list. Do not enter any expense compensated by insurance or otherwise	
(If 65 or over, see instructions, page 10)	1. Cost of medicines and drugs IN EXCESS of 1 percent of line 11, page 1	\$
	2. Other medical and dental expenses	\$
	3. Total	\$
	4. Enter 3 percent of line 11, page 1	
	5. Allowable amount (excess of line 3 over line 4). (See instructions, page 10, for limitations)	
Other Deductions	SAFE DEPOSIT BOX RENTAL	33.00
(See page 10 of instructions and attach information required)		
Total		33.00
TOTAL DEDUCTIONS (Enter here and on line 2 of Tax Computation, below)		\$ 8,057.37

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

1. Enter Adjusted Gross Income from line 11, page 1	\$ 42,557.37
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is \$5,000 or more: (a) a married person filing a separate return enter \$500; (b) all others enter 10 percent of line 1, or \$1,000, whichever is smaller.	8,057.37
3. Balance (line 1 less line 2)	34,500.00
4. Multiply \$600 by total number of exemptions claimed on line 4, page 1	3,600.00
5. TAXABLE INCOME (line 3 less line 4)	30,900.00
6. Tax on amount on line 5. Use appropriate tax rate schedule on page 15 of instructions. Do not use Tax Table on page 16	9,683.00
7. If you had capital gains and the alternative applies, enter the tax from separate Schedule D	
8. Tax credits. If you itemized deductions, enter:	
(a) Credit for income tax payments to a foreign country or U. S. possession (Attach Form 1116)	\$
(b) Tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest	
(c) Total	
9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 8(c)	\$ 9,683.00

670-10-74667-1 GPO

PLAINTIFFS' EXHIBIT 3

Form 1040-1958

Page 3

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2

Schedule A.—INCOME FROM DIVIDENDS (Income from Savings (Building) and Loan Associations and Credit Unions should be entered as interest in Schedule B)

1. Name of qualifying corporation declaring dividend (See instructions, page 11): (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)	Amount
H - AMERICAN PALESTINE TRADING	\$ 25-
2. Total	\$ 25-
3. Exclusion of \$50 (If both husband and wife received dividends, each is entitled to exclude not more than \$50 of his (her) own dividends)	25-
4. Excess, if any, of line 2 over line 3. Enter here and on line 1, Schedule J	\$ NONE
5. Name of nonqualifying corporation declaring dividend:	
6. Enter total of lines 4 and 5	\$ NONE

Schedule B.—INCOME FROM INTEREST

Name of payer	Amount	Name of payer	Amount
SEE SCHED ATT	\$		\$
Enter total here → 2,198.77			

Schedule D Summary.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1. From sale or exchange of capital assets (from separate Schedule D)	
2. From sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PENSIONS AND ANNUITIES (See instructions, page 12)

Part I.—General Rule	
1. Investment in contract	\$
2. Expected return	\$
3. Percentage of income to be excluded (line 1 divided by line 2)	%
4. Amount received this year	\$
5. Amount excludable (line 4 multiplied by line 3)	
6. Taxable portion (excess of line 4 over line 5)	

Part II.—Where your cost will be recovered within three years and your employer has contributed part of the cost

1. Cost of annuity (amounts you paid)	\$	4. Amount received this year	\$
2. Cost received tax-free in past years		5. Taxable portion (excess, if any, of line 4 over line 3)	
3. Remainder of cost (line 1 less line 2)	\$		

Schedule G.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation (explain in Sch. I) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
	\$	\$	\$	\$
1. Totals	\$	\$	\$	\$
2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)				

Schedule H.—OTHER INCOME

1. Partnerships (name and address):	PITTSBURGH PROPERTIES CO	1,354.10
2. Estates or trusts (name and address):	2 PARK AVE	
3. Other sources (state nature):	NYC IL	
Total income (or loss) from above sources (Enter here and on line 10, page 1)		\$3,552.37

PLAINTIFFS' EXHIBIT 3

NED + FRANCES MILLER
2302 AVE N
BKLYN, NY

1958

INCOME FROM INTEREST
FORM 1040 SCHED B

SAVINGS BANKS:

DIME	37210
KINGS HIGHWAY	71008
SOUTH BROOKLYN	42910
STATE OF ISRAEL BONDS	90-
PITTSBURGH PROPERTIES CO	114699
TOTAL	<u>219827</u>

CHARITABLE CONTRIBUTIONS
FORM 1040 PAGE 2

JULIA NEUMANN SCHOLARSHIP FUND	50-
TEMPLE HAAVATH SHOLOM	96250
NY BOARD OF RABBIS	30-
NAT'L CONFERENCE OF CHRISTIANS + JEWS	50-
JEWISH CHATAUQUA	25-
UNION OF AMERICAN HEBREW CONGREGATIONS	100-
UNITED JEWISH APPEAL	510-
BKLYN JEWISH COMMUNITY COUNCIL	50-
FEDERATION OF JEWISH PHILANTHROPIES	255-
SUNDRY ORGANIZATIONS	118-
TOTAL	<u>215060</u>

FORM **1040**U. S. Treasury Department
Internal Revenue Service**U. S. INDIVIDUAL INCOME TAX RETURN—1959**or Other Taxable Year Beginning 1959, Ending 19.....
(PLEASE TYPE OR PRINT)Name NED + FRANCES MILLER
(If this is a joint return of husband and wife, use first names and middle initials of both)Home address 2307 AVE N
(Number and street or rural route)BKLYN
(City, town, or post office)10
(Postal zone number)NY
(State)

Your Social Security Number

055 01 9461

Occupation

EXECUTIVE

Wife's Social Security Number

Occupation

● ATTACH CHECK OR MONEY ORDER HERE

● ATTACH COPY B OF FORMS W-2 HERE

- Exemptions**
1. Check blocks which apply. (a) Regular \$600 exemption ☒ Yourself ☒ Wife Enter number of exemptions checked 2
Check for wife only if all of her income is included in this return, or if she had no income. (b) Additional \$600 exemption if 65 or over at end of taxable year. ☐ Yourself ☐ Wife
(c) Additional \$600 exemption if blind at end of taxable year ☐ Yourself ☐ Wife
2. List first names of your children who qualify as dependents; give address if different from yours. JOHN Enter number of children listed 1
3. Enter number of exemptions claimed for other persons listed at top of page 2 2
4. Enter the total number of exemptions claimed on lines 1, 2, and 3 ✓

5. Enter all wages, salaries, bonuses, commissions, tips, and other compensation before payroll deductions (including any excess of expense account or similar allowance paid by your employer over your ordinary and necessary business expenses. See instructions, pp. 5-6.)

Employer's Name	Where Employed (City and State)	(a) Wages, etc.	(b) Income Tax Withheld
MILLER-STORMGUARD CORP	BKLYN, NY	\$ 39,000 -	\$ 7,004.40
Enter totals here		\$ 39,000 -	\$ 7,004.40

6. Less: Excludable "Sick Pay" in line 5 (See instructions, page 7. Attach required statement.) ...
7. Balance (line 5 less line 6) \$ 39,000 -
8. Profit (or loss) from business from separate Schedule C *
9. Profit (or loss) from farming from separate Schedule F *
10. Other income (or loss) from page 3 (Dividends, Interest, Rents, Pensions, etc.) \$ 5,813.64
11. Adjusted Gross Income (sum of lines 7, 8, 9, and 10) \$ 44,813.64

Check if unmarried "Head of Household" ☐, or "Surviving Widow or Widower" with dependent child ☐. (See instructions pp. 7-8)

12. TAX on income on line 11. (If line 11 is under \$5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions to find your tax and check here ☐. If line 11 is \$5,000 or more, or if you itemize deductions, compute your tax on page 2 and enter here the amount from line 9, page 2.) \$ 11,400 -

13. (a) Dividends received credit from line 5 of Schedule J \$
- (b) Retirement income credit from line 12 of Schedule K \$
14. Balance (line 12 less line 13) \$ 11,400 -
15. Enter your self-employment tax from separate Schedule C or F \$ 11,400 -
16. Sum of lines 14 and 15 \$ 11,400 -

17. (a) Tax withheld (line 5 above). Attach Forms W-2, Copy B. (See page 8, instructions.) \$ 7,004.40
- (b) Payments and credits on 1959 Declaration of Estimated Tax (See page 8, instructions.) \$ 2,250 -

18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the BALANCE DUE here \$ 2,145.60

19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the OVERPAYMENT here \$

20. Amount of line 19 to be: (a) Credited on 1960 estimated tax \$ (b) Refunded \$

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☒ Yes ☐ No (See page 6, instructions.)

If "Yes," did you submit an itemized accounting of expenses to your employer? ☐ Yes ☐ No (See instructions.)

County in which you live.

KINGS

Is your wife (or husband) filing a separate return for 1959?

☐ Yes ☒ No. If "yes," enter her (his) name and do not claim the exemption on this return.

If you owe any Federal tax for years before 1959, enter here the Internal Revenue District where the account is outstanding.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has any knowledge.

Sign here

(Taxpayer's signature and date)

(If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN)

(Wife's signature and date)

4/13/60

(Signature of preparer other than taxpayer)

ROUSCH & GURLICH

130 CLINTON STREET

76a BROOKLYN 1, NEW YORK

(Date)

76-10-70112-4

Name	Relationship	Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have gross income of \$600 or more?	Amount YOU furnished for dependent's support. If "30%" write "All"	Amount furnished by OTHERS including dependent
TILLIE COWAN	MOTHER	0-D	No	\$ ALL	\$
LILLIAN MILLER	SISTER-IN-LAW	0	No	ALL	

Enter on line 3, page 1, the number of exemptions claimed above.

→ If an exemption is based on a multiple-support agreement of a group of persons, attach the declarations described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION
 If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize State to whom paid. If necessary write more than one item on a line or attach additional sheets.
 Please put your name and address on any attachments.

Contributions	SEE SCHED ATT		
	Total paid but not to exceed 20% of line 11, page 1, except as described on page 8 of instructions....		\$ 2,029 -
Interest	MILLER-STORMGUARD CORP 1.625-		
	Total interest		1.625 -
Taxes	NYS INCOME 3,085.69		
	NYC REAL ESTATE 1,315.69		
	NYC SALES, ETC 342.09		
	Total taxes		4,743.67
Medical and dental expense (If 65 or over, see instructions, page 10)	Submit itemized list. Do not enter any expense compensated by insurance or otherwise		
	1. Cost of medicines and drugs IN EXCESS of 1 percent of line 11, page 1 \$ 61.53 2. Other medical and dental expenses 4,775.85 3. Total \$ 4,837.38 4. Enter 3 percent of line 11, page 1 1,404.41 5. Allowable amount (excess of line 3 over line 4). (See instructions, page 10, for limitations.) 932.97		
Other Deductions (See page 10 of instructions and attach information required)	SAFE DEPOSIT BOX RENTAL 33-		
	FEB 59 BURGLARY LOSS 1,300- DEDUCT: RECOVERY FROM INSURANCE 850- 450-		
	Total		483-
TOTAL DEDUCTIONS (Enter here and on line 2 of Tax Computation, below).....			\$ 9,813.64

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

1. Enter Adjusted Gross Income from line 11, page 1.....	\$ 46,813.64
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is \$5,000 or more, enter the smaller of 10 percent of line 1 or \$1,000 (\$500 if a married person filing a separate return).....	9,813.64
3. Balance (line 1 less line 2).....	37,000 -
4. Multiply \$600 by total number of exemptions claimed on line 4, page 1.....	3,000 -
5. Taxable Income (line 3 less line 4).....	34,000 -
6. Tax on amount on line 5. Use appropriate tax rate schedule on page 15 of instructions. Do not use Tax Table on page 16.....	11,400 -
7. If you had capital gains and the alternative tax applies, enter the tax from separate Schedule D.....	
8. Tax credits. If you itemized deductions, enter: (a) Credit for income tax payments to a foreign country or U. S. possession (Attach Form 1116)..... (b) Tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest..... (c) Total..... Enter here →	\$
9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 8(c)...	\$ 11,400 -

YEAR ENDED 1959
FILE NO. _____
FOLIO _____
FORM _____

INCOME FROM INTEREST
NAME OF PAYOR

78a

PLAINTIFFS' EXHIBIT 3

NED & FRANCES MILLER
MEDICAL EXPENSES
1959

DR THOMAS N CROSS	1700-
DR SAMUEL ZALDIN	265-
DR DANIEL GENNES	154-
DR S PECK	50-
DR S A WOLFE	25-
DR ABEL KENIN	25-
DR N. A. SILVERMAN	9-
MT SINAI HOSPITAL	65-
DR SAMUEL PAUL	45-
DR ALEXANDER WIENER	15-
YC CLINICAL LAB	25-
JACOFF SURGICAL SUPPLY	12385
NURSING	154-
 TOTAL	 <u>27585</u>
 DRUGS & MEDICINES	 52963
 TOTAL	 <u><u>28052</u></u>

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2**Schedule A.—INCOME FROM DIVIDENDS** (Income from Savings (Building) and Loan Associations and Credit Unions should be entered as interest in Schedule B)

1. Name of qualifying corporation declaring dividend (See instructions, page 11): (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)	Amount
(H) AMERICAN-PALESTINE TRADING	\$ 25-
2. Total	\$ 25-
3. Exclusion of \$50 (If both husband and wife received dividends, each is entitled to exclude not more than \$50 of his (her) own dividends)	25-
4. Excess, if any, of line 2 over line 3. Enter here and on line 1, Schedule J	\$ -0-
5. Name of nonqualifying corporation declaring dividend:	
6. Enter total of lines 4 and 5	\$

Schedule B.—INCOME FROM INTEREST (This includes interest credited to your account)

Name of payer	Amount	Name of payer	Amount
SEE SCHED ATT	\$		\$
Enter total here→		2,632.60	

Schedule D Summary.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1. From sale or exchange of capital assets (from separate Schedule D)	3,197.32
2. From sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PENSIONS AND ANNUITIES (See instructions, page 12)**Part I.—General Rule**

1. Investment in contract	\$	4. Amount received this year	\$
2. Expected return	\$	5. Amount excludable (line 4 multiplied by line 3)	
3. Percentage of income to be excluded (line 1 divided by line 2)	%	6. Taxable portion (excess of line 4 over line 5)	

Part II.—Where your employer has contributed all or part of the cost and your contribution will be recovered tax-free within three years.
If your cost was fully recovered in prior years or if you did not contribute to the cost, enter the total amount received in line 5 omitting lines 1 through 4.

1. Cost of annuity (amounts you paid)	\$	4. Amount received this year	\$
2. Cost received tax-free in past years		5. Taxable portion (excess, if any, of line 4 over line 3)	
3. Remainder of cost (line 1 less line 2)	\$		

Schedule G.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation (explain in Sch. I) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
	\$	\$	\$	\$
1. Totals	\$	\$	\$	\$
2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)				

Schedule H.—OTHER INCOME

1. Partnerships (name and address)	PITTSBURGH PROPERTIES CO	1,983.52
2. Estates or trusts (name and address)	7 PARK AVE, NYC 16	
3. Other sources (state nature)		

Total income (or loss) from above sources (Enter here and on line 10, page 1) \$7,813.64

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2**Schedule I.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE G**

1. Kind of property (if buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed (or allowable) in prior years	5. Method of computing depreciation	6. Rate (%) or life (years)	7. Depreciation for this year

Schedule J.—DIVIDENDS RECEIVED CREDIT (See instructions, page 14)

1. Amount of dividends on line 4, Schedule A.....	\$	
2. Tentative credit (4 percent of line 1).....		
LIMITATION ON CREDIT		
3. Tax shown on line 12, page 1, plus amount, if any, shown on line 8(b), page 2.....		
4. 4 percent of taxable income.....		
Taxable Income Means <div style="display: inline-block; vertical-align: top; margin-left: 10px;"> (a) If tax is computed on page 2, the amount shown on line 5, page 2. (b) If Tax Table is used, the amount shown on line 11, page 1, less 10 percent thereof, and less the deduction for exemptions (\$600 multiplied by the number of exemptions claimed on line 4, page 1). </div>		
5. Dividends received credit. Enter here and on line 13(a), page 1, the smallest of the amounts on line 2, 3, or 4, above.....	\$	

Schedule K.—RETIREMENT INCOME CREDIT (See instructions, page 14)

This credit does not apply if you received pensions or annuities of \$1,200 or more from Social Security or Railroad Retirement;
 2. If you are under 65 years of age and had "earned income" of \$2,100 or more; OR
 3. If you are 65 or over and under 72, and had "earned income" of \$2,400 or more.

If separate return, use column B only. If joint return, use column A for wife and column B for husband—→

Did you receive earned income in excess of \$600 in each of any 10 calendar years before the taxable year 1959? Widow or widowers see instructions, page 14.....

If answer above is "Yes" in either column, furnish all information below in that column.

	A	B
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
1. Retirement income for taxable year:		
(a) For taxpayers under 65 years of age: Enter only income received from pensions and annuities under public retirement systems and included in line 11, page 1, of this return.....	\$	\$
(b) For taxpayers 65 years of age or older: Enter total of pensions and annuities, interest, and dividends included in line 11, page 1, and gross rents included in column 2, Schedule G, page 3, of this return..		
LIMITATION ON RETIREMENT INCOME		
2. Maximum amount of retirement income for credit computation	\$ 1,200 00	\$ 1,200 00
3. Deduct:		
(a) Amounts received in taxable year as pensions or annuities under the Social Security Act, the Railroad Retirement Acts, and certain other exclusions from gross income..		
(b) Earned income received in taxable year: (This line does not apply to persons 72 years of age or over)		
(1) Taxpayers under 65 years of age, enter amount in excess of \$900.....		
(2) Taxpayers 65 or over and under 72, enter amount in excess of \$1,200.....		
4. Total of lines 3(a) and 3(b).....		
5. Balance (line 2 minus line 4).....		
6. Line 5 or line 1, whichever is smaller.....		
7. Tentative credit (20 percent of line 6).....		
8. Total tentative credit on this return (total of amounts on line 7, columns A and B).....		
LIMITATION ON RETIREMENT INCOME CREDIT		
9. Amount of tax shown on line 12, page 1.....		
10. Less: Dividends received credit from line 5, Schedule J, above.....		
11. Balance (line 9 less line 10).....		
12. Retirement Income credit. Enter here and on line 13(b), page 1, the amount on line 8 or line 11, whichever is smaller.....	\$	

SCHEDULE D
(Form 1040)

U. S. Treasury Department—Internal Revenue Service
GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1959

Attach this schedule to your Income Tax Return, Form 1040

For Calendar Year 1959, or other taxable year beginning , 1959, and ending , 19

Name and Address as shown on page 1 of Form 1040 **NED & FRANCES MILLER**
2302 AVE N
BKLYN, NY

(I) CAPITAL ASSETS

Short-Term Capital Gains and Losses—Assets Held Not More Than 6 Months

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price (contract price)	e. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	f. Cost or other basis and cost of subsequent improvements (if not purchased, attach explanation)	g. Expense of sale	h. Gain or loss (column d plus column e less sum of columns f and g)
1.							\$
2. Enter your share of net short-term gain (or loss) from partnerships and fiduciaries							
3. Enter unused capital loss carryover from 5 preceding taxable years (Attach statement)							
4. Net short-term gain (or loss) from lines 1, 2, and 3							\$

Long-Term Capital Gains and Losses—Assets Held More Than 6 Months

1. LAND & BLDG 2302 AVE N BKLYN, NY	5/19/44	10/9/59	15,000.-		8,586.85	16.50	\$ 6,396.65
6. Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries							
7. Net long-term gain (or loss) from lines 5 and 6							\$6,396.65
8. Combine the amounts shown on lines 4 and 7, and enter the net gain (or loss) here							\$6,396.65
9. If line 8 shows a GAIN —Enter 50 percent of line 7 or 50 percent of line 8, whichever is smaller. (Enter zero if there is a loss or no entry on line 7)							3,198.33
10. Deduct line 9 from line 8. Enter balance here and on line 1, Schedule D Summary on page 3 of Form 1040							\$3,197.22
11. If line 8 shows a LOSS —Enter here and on line 1, Schedule D Summary, Form 1040, the smallest of the following: (a) the amount on line 8; (b) taxable income computed without regard to capital gains and losses and the deduction for exemptions; or (c) \$1,000							\$

COMPUTATION OF ALTERNATIVE TAX.—Use only if the net long-term capital gain exceeds the net short-term capital loss, or if there is a net long-term capital gain only, and you are filing (a) a separate return with taxable income exceeding \$18,000, or (b) a joint return, or as a surviving husband or wife, with taxable income exceeding \$36,000, or (c) as a head of household with taxable income exceeding \$24,000.

12. Enter the amount from line 5, page 2, of Form 1040	\$
13. Enter amount from line 9 above	\$
14. Balance (line 12 less line 13)	\$
15. Enter tax on amount on line 14 (Use applicable tax rate schedule on page 15 of Form 1040 Instructions)	\$
16. Enter 50 percent of line 13	\$
17. Alternative tax (line 15 plus line 16). If smaller than amount on line 6, page 2, Form 1040, enter this alternative tax on line 7, page 2, Form 1040	\$

(II) PROPERTY OTHER THAN CAPITAL ASSETS

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price (contract price)	e. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	f. Cost or other basis and cost of subsequent improvements (if not purchased, attach explanation)	g. Expense of sale	h. Gain or loss (column d plus column e less sum of columns f and g)
1.							\$
2. Enter your share of non-capital gain (or loss) from partnerships and fiduciaries							
3. Net gain (or loss) from lines 1 and 2. Enter here and on line 2, Schedule D Summary on page 3 of Form 1040							\$

PLAINTIFFS' EXHIBIT 3

PAGE 2

RETURN OF TAXABLE INCOME SUBJECT TO NORMAL TAX

IT-201

OTHER INCOME

(DO NOT INCLUDE COMPENSATION AS EMPLOYEE IN THIS SECTION)

AMOUNT

30. INTEREST on Bank Deposits, Notes, Mortgages, Corporation Bonds, etc.	If none, check box: NONE <input type="checkbox"/>	\$ 2,632.60
31. DIVIDENDS	NOTE: Report gross dividends, including capital gain dividends from regulated investment companies. Do not claim any dividend exclusion or credit. If none, check box: NONE <input type="checkbox"/>	25.00
32. INCOME FROM PARTNERSHIPS (Give Name and Address)	Enter net income (or loss) other than capital gain or losses from Partnerships, Syndicates, Pools or Joint Ventures. Report distributive share of net capital gain (or loss) on Item 2, Schedule E, Page 4.	2,607.60
NAME AND ADDRESS: PITTSBURGH OF ARTISTS CO		
33. INCOME FROM ESTATES AND TRUSTS (Give Name and Address)		
34. INCOME (or Loss) FROM BUSINESS OR PROFESSION (From Schedule A, Line 29)		
35. INCOME (or Loss) FROM RENTS AND ROYALTIES (From Schedule B, Col. 6)		
36. INCOME FROM ANNUITIES OR PENSIONS (Compute the amount to be reported in Sch. F, page 4)		
37. OTHER INCOME (Describe)		
38. OTHER INCOME (Enter total at Item 5, Page 1)		\$ 5,265.20

39. ☐ **OPTIONAL DEDUCTION.** If you claim the optional deduction at Item 7, page 1, read the instructions below and check box.

IF YOU CLAIM THE OPTIONAL DEDUCTION

1. You may not claim any other deductions on pages 1, 2, or 3.
2. Your wife (husband) must also use the optional deduction on any separate return filed by her (him).
3. The total amount of optional deduction claimed by husband and wife may not exceed 10% of their combined income or \$1000, whichever is less, even though separate returns are filed.

SPECIFIC DEDUCTIONS NOTE: If you have claimed the Optional Deduction do NOT make entries in Items 40 to 51 below.

DO NOT INCLUDE ANY DEDUCTIONS BELOW PERTAINING TO SCHEDULES A AND B ON PAGE 3. SUBMIT FULL DETAILS, AS REQUIRED, ON SCHEDULES OR ATTACHMENTS. Failure to furnish such information will result in disallowances or necessitate correspondence or conferences.

DEDUCTIONS (Other than Contributions and Medical and Dental Expenses)

40. INTEREST ON INDEBTEDNESS	MILLER - STURGEON & CO. CORP	TOTAL INTEREST	\$ 1,625.00
41. TAXES ON REAL PROPERTY	NYC REAL ESTATE	TOTAL PROPERTY TAXES	1,315.60
42. OTHER TAXES	NYC SALES, FED EXCISE ETC	TOTAL OTHER TAXES	380.62
43. OTHER DEDUCTIONS (DO NOT INCLUDE CONTRIBUTIONS OR MEDICAL EXPENSES)	FEDERAL EMPLOYERS' LIABILITY INS. COMPANY 450- SAFE DEPOSIT BOX RENTAL 33- LIFE INS. INTEREST 150-	TOTAL OTHER DEDUCTIONS	633.00
44. DEDUCTIONS (Enter total at Item 8, Page 1)			\$ 3,914.22

CONTRIBUTIONS — See Instructions as to Limitations.

NAME and ADDRESS of ORGANIZATION	AMOUNT	NAME and ADDRESS of ORGANIZATION	AMOUNT
SEE SCHEDULE ATT			
CONTRIBUTIONS (Enter total at Item 10, Page 1)		\$ 0.00	

MEDICAL AND DENTAL EXPENSES — See Instructions as to Limitations.

List items of expense below. Use separate sheets if necessary and attach to return.

46. Total Medical and Dental Expenses Listed Above	\$ 2,105.52
47. Enter here BALANCE shown at Item 11, Page 1	\$ 36,201.00
48. Enter 3% of the first \$6,000 shown at Item 47	\$ 180.00
49. Enter 5% of amount in excess of \$6,000 shown at Item 47	\$ 1,607.00
50. Enter the total of Items 48 and 49 in this column	\$ 1,787.00
51. (Item 46 less Item 50)	\$ 918.52

EXEMPTIONS FOR DEPENDENTS		MONTHS LIVED IN YOUR HOME IF BOB OR DIED DURING YEAR ALSO WRITE "B" OR "D"	DID DEPENDENT HAVE GROSS INCOME OF \$400 OR MORE?	AMOUNT YOU FURNISHED FOR DEPENDENT'S SUPPORT. IF 100% WRITE "ALL"	AMOUNT FURNISHED BY OTHERS INCLUDING DEPENDENT
SCHEDULE 1. OTHER THAN WIFE AND CHILDREN	NAME				
	TILLIE COWAN	MOTHER	0-0	ALL	
	LILLIAN MILLER	SISTER	0	ALL	

Enter at Item 14a, page 1, the number of exemptions claimed above. If an exemption is based on a multiple support agreement of a group of persons, attach Form IT-210 or copies of Federal Internal Revenue Service Form 2120.

PLAINTIFFS' EXHIBIT 3

17-201

RETURN OF TAXABLE INCOME SUBJECT TO NORMAL TAX (continued)

PAGE 3

SCHEDULE A — Income (or loss) from Business or Profession

If GROSS INCOME exceeded \$10,000, or NET INCOME \$5,000, (or a prorata part for period of less than 12 months), attach Form IT-202, if required.

1. Kind of business	2. Trade Name																																																								
3. Date business was begun	4. Business address																																																								
5. Indicate accounting basis: Cash <input type="checkbox"/> Accrual <input type="checkbox"/>	6. Total Receipts																																																								
<table border="1"> <tr> <th colspan="2">COST OF GOODS SOLD (To be used if inventories were an income determining factor.)</th> <th colspan="2">OTHER BUSINESS DEDUCTIONS (If Optional Deduction is claimed at Item 39, page 2, leave lines 16-24 below blank)</th> </tr> <tr> <td>7. Inventory at beginning of year</td> <td>\$</td> <td>16. Salary paid you, your wife, or minor children</td> <td>\$</td> </tr> <tr> <td>8. Merchandise bought for sale</td> <td>\$</td> <td>17. Other salaries and wages not deducted in "Cost of Goods Sold"</td> <td>\$</td> </tr> <tr> <td>8a. Total of lines 7 and 8</td> <td>\$</td> <td>17a. Rent</td> <td>\$</td> </tr> <tr> <td>8b. Less taken for Personal use</td> <td>\$</td> <td>18. Interest on business indebtedness</td> <td>(explain in Schedule D)</td> </tr> <tr> <td>8c. Available for Sale</td> <td>\$</td> <td>19. Taxes (except Income Taxes)</td> <td>(explain in Schedule D)</td> </tr> <tr> <td>9. Labor</td> <td>\$</td> <td>20. Losses, other than capital losses</td> <td>(explain in Schedule D)</td> </tr> <tr> <td>10. Materials and supplies</td> <td>\$</td> <td>21. Bad debts arising from sales or services</td> <td>(explain in Schedule D)</td> </tr> <tr> <td>11. Other costs (explain in Sch. D)</td> <td>\$</td> <td>22. Depreciation, obsolescence, and depletion</td> <td>(explain in Schedule C)</td> </tr> <tr> <td>12. Total of lines 8c thru 11</td> <td>\$</td> <td>22a. Repairs</td> <td>(explain in Schedule D)</td> </tr> <tr> <td>13. Less inventory at end of year</td> <td>\$</td> <td>23. Other expenses</td> <td>(explain in Schedule D)</td> </tr> <tr> <td>14. Cost of goods sold (line 12 less 13)</td> <td>\$</td> <td>24. Total of lines 16 thru 23</td> <td>\$</td> </tr> <tr> <td>15. Gross profit (line 6 less 14)</td> <td>\$</td> <td>25. Total of lines 14 and 24</td> <td>\$</td> </tr> <tr> <td>26. Operating income (or loss) from business (line 6 less 25)</td> <td>\$</td> <td></td> <td></td> </tr> </table>		COST OF GOODS SOLD (To be used if inventories were an income determining factor.)		OTHER BUSINESS DEDUCTIONS (If Optional Deduction is claimed at Item 39, page 2, leave lines 16-24 below blank)		7. Inventory at beginning of year	\$	16. Salary paid you, your wife, or minor children	\$	8. Merchandise bought for sale	\$	17. Other salaries and wages not deducted in "Cost of Goods Sold"	\$	8a. Total of lines 7 and 8	\$	17a. Rent	\$	8b. Less taken for Personal use	\$	18. Interest on business indebtedness	(explain in Schedule D)	8c. Available for Sale	\$	19. Taxes (except Income Taxes)	(explain in Schedule D)	9. Labor	\$	20. Losses, other than capital losses	(explain in Schedule D)	10. Materials and supplies	\$	21. Bad debts arising from sales or services	(explain in Schedule D)	11. Other costs (explain in Sch. D)	\$	22. Depreciation, obsolescence, and depletion	(explain in Schedule C)	12. Total of lines 8c thru 11	\$	22a. Repairs	(explain in Schedule D)	13. Less inventory at end of year	\$	23. Other expenses	(explain in Schedule D)	14. Cost of goods sold (line 12 less 13)	\$	24. Total of lines 16 thru 23	\$	15. Gross profit (line 6 less 14)	\$	25. Total of lines 14 and 24	\$	26. Operating income (or loss) from business (line 6 less 25)	\$		
COST OF GOODS SOLD (To be used if inventories were an income determining factor.)		OTHER BUSINESS DEDUCTIONS (If Optional Deduction is claimed at Item 39, page 2, leave lines 16-24 below blank)																																																							
7. Inventory at beginning of year	\$	16. Salary paid you, your wife, or minor children	\$																																																						
8. Merchandise bought for sale	\$	17. Other salaries and wages not deducted in "Cost of Goods Sold"	\$																																																						
8a. Total of lines 7 and 8	\$	17a. Rent	\$																																																						
8b. Less taken for Personal use	\$	18. Interest on business indebtedness	(explain in Schedule D)																																																						
8c. Available for Sale	\$	19. Taxes (except Income Taxes)	(explain in Schedule D)																																																						
9. Labor	\$	20. Losses, other than capital losses	(explain in Schedule D)																																																						
10. Materials and supplies	\$	21. Bad debts arising from sales or services	(explain in Schedule D)																																																						
11. Other costs (explain in Sch. D)	\$	22. Depreciation, obsolescence, and depletion	(explain in Schedule C)																																																						
12. Total of lines 8c thru 11	\$	22a. Repairs	(explain in Schedule D)																																																						
13. Less inventory at end of year	\$	23. Other expenses	(explain in Schedule D)																																																						
14. Cost of goods sold (line 12 less 13)	\$	24. Total of lines 16 thru 23	\$																																																						
15. Gross profit (line 6 less 14)	\$	25. Total of lines 14 and 24	\$																																																						
26. Operating income (or loss) from business (line 6 less 25)	\$																																																								
27. Discount and other business income (describe)																																																									
28. Gains or losses from sale or exchange of land or depreciable property used in business (Attach a schedule of details)																																																									
29. Net income (or loss) from business (Total of lines 26, 27 and 28) (Enter at Item 34, page 2)																																																									

SCHEDULE B — Income from Rents and Royalties — (See Instruction Sheet)

(1) KIND OF PROPERTY and LOCATION (If any portion of property is used personally, deductions shown in columns 3, 4 and 5 should be apportioned, and method of apportionment explained in Schedule D.)	(2) GROSS AMOUNT OF RENTS	If Optional Deduction is claimed at Item 37, Page 2, leave Columns (3), (4) and (5) blank.			(6) NET AMOUNT OF RENTS
		(3) DEPRECIATION AND DEPLETION (explain in Schedule C)	(4) REPAIRS (explain in Schedule D)	(5) OTHER EXPENSES (explain in Schedule D)	
	\$	\$	\$	\$	\$
Totals (Enter Tot. Col. (6) at Item 35, p. 2)	\$	\$	\$	\$	\$

SCHEDULE C — Explanation of Deductions for Depreciation and Depletion Claimed in Schedules A and B.

If the property was acquired after January 1, 1919, base depreciation on the cost thereof, if acquired prior to January 1, 1919, base depreciation on the January 1, 1919 value. If deduction is based on January 1, 1919 value, attach statement showing such value.

1. Refer to Line No.	2. KIND OF PROPERTY (Principal material of which constructed) AND LOCATION	3. DATE ACQUIRED	4. COST OF LAND	5. COST OF PROPERTY OTHER THAN LAND	DEPRECIATION (NOT APPLICABLE TO LAND) AND DEPLETION		
					6. RATE	7. AMOUNT IN PRIOR YEARS	8. AMOUNT FOR THIS YEAR
			\$	\$		\$	\$

SCHEDULE D — Explanation of Deductions (Other Than Depreciation and Depletion) Claimed in Schedules A and B.

1. Refer to Line No.	2. EXPLANATION	3. AMOUNT	4. Refer to Line No.	5. EXPLANATION	6. AMOUNT
		\$			\$

PLAINTIFFS' EXHIBIT 3

PAGE 4 1959 - RETURN OF NET CAPITAL GAIN SUBJECT TO NET CAPITAL GAIN TAX - 1959 17-201

SCHEDULE E — **Gains and Losses from Sales or Exchanges of Stocks, Bonds, Lands, Buildings, and Other Property**

SCHEDULE E — Include all property sold or exchanged, except stock in trade, or property held primarily for sale to customers in the ordinary course of the business, or land or depreciable property used in business (which must be reported at Line 28 of Schedule A, page 3). Losses through securities claimed to be worthless are to be reported here. (See instruction sheet.)

[illegible]

If sum of column (4) and (5) is greater than column (6) — enter gain on line 1 of column (7). If less, enter loss on line 1 column (8).

If sum of column (4) and (5) is greater than column (6) — enter gain on line 1 of column (7). If less, enter loss on line 1 column (8).		(7) GAIN	(8) LOSS
1. Gain or loss from sale or exchange of partnership property.....		\$ 413 12	\$ 0
2. Distributable share of partnership net capital gain or loss (Item 4, column 6, page 1, Form IT-204) (Attach statement showing name, address and distributive share of each partnership).....		\$ XXXXXXXX XXX	\$ 16 50
3. Capital deductions (explain below).....		\$	\$
4. Totals.....		\$ 413 12	\$ 16 50
5. Net capital gain or loss (excess of column (7) over column (8) or column (8) over column (7)).....		\$ 413 12	\$ 16 50
6. Net Capital Loss carry-over (Enter net gain or net loss for each year indicated without adjustment for carry-over losses.)			\$

for carry-over losses.)			YEAR	GAIN	LOSS
1954.....	\$	\$	1956.....	\$	\$
1955.....			1957.....		
			1958.....		\$

ENTER NET
CAPITAL LOSS
CARRY-OVER
← HERE

Explanation of Capital Deductions (Line 3)

Explanation of Capital Deductions (Line 3)		7. BALANCE (Line 5, Column (1) Minus Line 6)...	\$ 6,291.25
FILING FEE 16.50		8. Balance of exemption not used at Item 14, p. 1....	
		9. Amount subject to Net Capital Gain Tax.....	\$ 6,376.64
		10. NET CAPITAL GAIN TAX (Use Schedule E below.) Transfer this amount to	\$ 111.47

SCHEDULE F — Income from Annuities or Pensions

1. Cost of Annuity (amount you paid).....		\$			5. Amount received this year	\$		
2. Cost recovered tax-free in past years.....					6. Excess of line 5 over line 3	\$		
3. Remainder of cost (line 1 less line 2).....		\$			7. Enter line 4, or line 6, whichever is greater (but not more than line 5) at Item 36, page 2.			
4. 3% of line 1		\$						

SCHEDULE G — Non-Taxable Income — (See Instruction Sheet)

SCHEDULE G — Non-taxable income (see instructions)			
1. DESCRIPTION	2. AMOUNT	3. DESCRIPTION	4. AMOUNT
	\$		\$

SCHEDULE H — Computation of Normal Tax

SCHEDULE H — Computation of Normal Tax
Figure your tax on amount of Item 15, Page 1, by using the
following tax rate schedule.

If the amount at Item 15, Page 1 is:		YOUR TAX IS	
Not over \$1,000		2% of the amount at Item 15	
Over —	But not over —		of excess over —
\$ 1,000 — — —	\$ 3,000	\$ 20 plus 3% —	\$ 1,000
3,000 — — —	5,000	80 plus 4% —	3,000
5,000 — — —	7,000	160 plus 5% —	5,000
7,000 — — —	9,000	260 plus 6% —	7,000
9,000 — — —	11,000	380 plus 7% —	9,000
11,000 — — —	13,000	520 plus 8% —	11,000
13,000 — — —	15,000	680 plus 9% —	13,000
15,000		860 plus 10% —	15,000

Enter at Item 16, Page 1, the Total Normal Tax Computed.

SCHEDULE I — Computation of Net Capital Gain Tax

Figure your tax on amount at Item 9, Page 4, by using the following tax rate schedule.

If the amount at Item 9, Page 4 is:		YOUR TAX IS	
Not over \$1,000		1% of the amount at Item 9	
Over —	But not over —		of excess over —
\$ 1,000 — — —	\$ 3,000	\$ 10 plus 1½% —	\$ 1,000
3,000 — — —	5,000	40 plus 2 % —	3,000
5,000 — — —	7,000	80 plus 2½% —	5,000
7,000 — — —	9,000	130 plus 3 % —	7,000
9,000 — — —	11,000	190 plus 3½% —	9,000
11,000 — — —	13,000	260 plus 4 % —	11,000
13,000 — — —	15,000	340 plus 4½% —	13,000
15,000		430 plus 5 % —	15,000

Enter at Item 10, Page 4, the Net Capital Gain Tax Computed.

This space for office use only.

AUDITED BY

PLAINTIFFS' EXHIBIT 3

FORM 1040
U.S. Treasury Department
Internal Revenue Service

U.S. INDIVIDUAL INCOME TAX RETURN—1960

or Other Taxable Year Beginning _____ 1960, Ending _____

First name and initial NEED FRANCES Last name MILLER

(If this is a joint return of husband and wife, use first names and middle initials of both)

Home address 7302 AVE N
(Number and street or rural route)
BKLYN 10 NY
(City, town, or post office) (Postal zone number) (State)

Your Social Security Number 055-01-7461 Occupation EXECUTIVE W. s's Social Security Number _____ Occupation _____

Exemptions

1. Check blocks which apply. (a) Regular \$600 exemption ☒ Yourself ☐ Wife Enter number of exemptions checked 2
(b) Additional \$600 exemption if 65 or over at end of taxable year. ☐ Yourself ☐ Wife
(c) Additional \$600 exemption if blind at end of taxable year. ☐ Yourself ☐ Wife
2. List first names of your children who qualify as dependents; give address if different from yours. JUAN Enter number of children listed 1
3. Enter number of exemptions claimed for other persons listed at top of page 2. 1
4. Enter the total number of exemptions claimed on lines 1, 2, and 3. 4

Income

5. Enter all wages, salaries, bonuses, commissions, tips, and other compensation before payroll deductions (including any excess of expense account or similar allowance paid by your employer over your ordinary and necessary business expenses. See instructions, pp. 3-4.)

Employer's Name	Where Employed (City and State)	(a) Wages, etc.	(b) Federal Income Tax Withheld
<u>MILLER-SONNENSHINE</u>	<u>BKLYN, NY</u>	<u>\$ 30,750 -</u>	<u>\$ 5,522.70</u>
<u>CURT</u>			
Enter totals here		<u>\$ 30,750 -</u>	<u>\$ 5,522.70</u>

6. Less Excludable "Sick Pay" in line 5 (See instructions, page 7. Attach required statement.) \$ 30,750 -

7. Balance (line 5 less line 6) \$ 30,750 -

8. Profit (or loss) from business from separate Schedule C. +

9. Profit (or loss) from farming from separate Schedule F. +

10. Other income (or loss) from page 3 (Dividends, Interest, Rents, Pensions, etc.) 5,790.02

11. Adjusted Gross Income (sum of lines 7, 8, 9, and 10) \$ 36,540.02

Check if unmarried "Head of Household" ☐ or "Surviving Widow or Widower" with dependent child ☐ (See instructions pp. 7-8)

12. TAX on income on line 11. (If line 11 is under \$5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions to find your tax and check here ☐. If line 11 is \$5,000 or more, or if you itemize deductions, compute your tax on page 2 and enter here the amount from line 9, page 2.) \$ 7,918 -

If income was all from wages, omit lines 13 through 16

13. (a) Dividends received credit from line 5 of Schedule J. \$ -
(b) Retirement income credit from line 12 of Schedule K. \$ -

14. Balance (line 12 less line 13) \$ 7,918 -

15. Enter your self-employment tax from separate Schedule C or F. \$ 7,918 -

16. Sum of lines 14 and 15. \$ 7,918 -

17. (a) Federal tax withheld (line 5, col. (b) above). Attach Forms W-2, Copy B. \$ 5,522.70
(b) Payments and credits on 1960 Declaration of Estimated Tax (See page 8, instructions.) 1,500 -

District Director's office where paid BKLYN, NY

18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the BALANCE DUE here \$ 8953.
Pay in full with this return to "Internal Revenue Service." If less than \$1.00, file return without payment.

19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the OVERPAYMENT here \$ -
If less than \$1.00, the overpayment will be refunded only upon application.

20. Amount of line 19 to be: (a) Credited on 1961 estimated tax \$ -; (b) Refunded \$ -

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☒ Yes ☐ No (See page 6, instructions.)
If "Yes," did you submit an itemized accounting of expenses to your employer? ☒ Yes ☐ No

Country in which you live, KINGS Is your wife (husband) filing a separate return for 1960? ☐ Yes ☒ No. If "yes," enter her (his) name and do not claim the exemption on this return. Do you owe any Federal tax for years before 1960? ☐ Yes ☒ No. If "Yes," enter here the Internal Revenue District where the account is outstanding.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has any knowledge.

Sign here (Taxpayer's signature and date) (If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN) (Wife's signature and date)

ROUCH & ENGLISH 4/10/61
(Address) (Date)
150 CLINTON STREET
BROOKLYN 1, NEW YORK

PLAINTIFFS' EXHIBIT 3

Form 1040-1960 EXEMPTIONS FOR PERSONS OTHER THAN YOUR WIFE AND CHILDREN

Page 2

Name	Relationship	Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have gross income of \$600 or more?	Amount YOU furnished for dependent's support. If 100% write "All"	Amount furnished by OTHERS including dependent (See instructions, p. 0)
.....
.....
.....

Enter on line 3, page 1, the number of exemptions claimed above.

→ If an exemption is based on a multiple-support agreement of a group of persons, attach the declarations described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION

If Husband and Wife (Not Legally Separated) File Separate Returns and one Itemizes Deductions, the Other Must Also Itemize State to whom paid. If necessary, write more than one item on a line or attach additional sheets. Please put your name and address on any attachments.

Contributions	SEE SCHEDULE ATT		
	Total paid but not to exceed 20% of line 11, page 1, except as described on page 8 of instructions....		\$ 1,230 -
Interest	MILLER-SPRINGGUARD CDRP 1625-		
	Total interest		1,625 -
Taxes	Real estate taxes 552.50	State income taxes 2,651.18	
	State and local sales taxes 323.24	Other taxes (specify).....	
	Total taxes		3,527.72
Medical and dental expense (Submit itemized list. Do not enter any expense compensated by insurance or otherwise)	NOTE: If you or your wife are 65 years of age or over, or if you or your wife have a dependent parent 65 or over, do not use this schedule. See page 3 of the instructions for larger deduction. Others use schedule below.		
	1. Total cost of medicine and drugs.....	\$	
	2. 1 percent of line 11, page 1.....		
	3. Excess, if any, of line 1 over line 2.....		
	4. Other medical and dental expenses.....	2,221 -	
	5. Total of lines 3 and 4.....	2,221 -	
	6. Enter 3 percent of line 11, page 1.....	\$ 1,096.20	
	7. Allowable amount (excess of line 5 over line 6; see page 10 for maximum limitation).....		1,124.80
Other Deductions (See page 10 of instructions and attach information required)	CARP DEPOSIT FOR RENTAL 53-		
	Total		33 -
TOTAL DEDUCTIONS (Enter here and on line 2 of Tax Computation, below).....			\$ 7,540.02

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

1. Enter Adjusted Gross Income from line 11, page 1.....	\$ 26,240.02
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is \$5,000 or more, enter the smaller of 10 percent of line 1 or \$1,000 (\$500 if a married person filing a separate return).....	2,520.02
3. Balance (line 1 less line 2).....	23,719.00
4. Multiply \$600 by total number of exemptions claimed on line 4, page 1.....	2,400 -
5. Taxable Income (line 3 less line 4).....	21,319.00
6. Tax on amount on line 5. Use appropriate tax rate schedule on page 15 of instructions. Do not use Tax Table on page 16.....	7,918 -
7. If you had capital gains and the alternative tax applies, enter the tax from separate Schedule D.....	
8. Tax credits. If you itemized deductions, enter:	
(a) Credit for income tax payments to a foreign country or U.S. possession (Attach Form 1116).....	\$
(b) Tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest.....	
(c) Total.....	
9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 8(c)...	\$ 7,918 -

670-10-78130-1 UPO

PLAINTIFFS' EXHIBIT 3

Form 1040-1960

Page 3

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2

Schedule A.—INCOME FROM DIVIDENDS (Income from Savings (Building) and Loan Associations and Credit Unions should be entered as interest in Schedule B)

1. Name of qualifying corporation declaring dividend (See instructions, page 11):

(Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)

(H) AMERICAN-PALESTINE TRADING

Amount

\$ 25-

2. Total

\$ 25-

3. Exclusion of \$50 (If both husband and wife received dividends, each is entitled to exclude not more than \$50 of his (her) own dividends)

25-

4. Excess, if any, of line 2 over line 3. Enter here and on line 1, Schedule J.

\$ 0-

5. Name of nonqualifying corporation declaring dividend:

6. Enter total of lines 4 and 5.

\$

Schedule B.—INCOME FROM INTEREST (This includes interest credited to your account)

Name of payer	Amount	Name of payer	Amount
SEE	\$		\$
SCHEN			
NTT			

Enter total here→

2,980 80

Schedule D Summary.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

- From sale or exchange of capital assets (from separate Schedule D).
- From sale or exchange of property other than capital assets (from separate Schedule D).

Schedule E.—INCOME FROM PENSIONS AND ANNUITIES (See instructions, page 12)

Part I.—General Rule

1. Investment in contract	\$	4. Amount received this year	\$
2. Expected return	\$	5. Amount excludable (line 4 multiplied by line 3)	
3. Percentage of income to be excluded (line 1 divided by line 2)	%	6. Taxable portion (excess of line 4 over line 5)	

Part II.—Where your employer has contributed all or part of the cost and your contribution will be recovered tax-free within three years. If your cost was fully recovered in prior years, enter the total amount received in line 5 omitting lines 1 through 4.

1. Cost of annuity (amounts you paid)	\$	4. Amount received this year	\$
2. Cost received tax-free in past years		5. Taxable portion (excess, if any, of line 4 over line 3)	
3. Remainder of cost (line 1 less line 2)	\$		

Schedule G.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property (Indicate whether rent or royalty)	2. Amount of rent or royalty	3. Depreciation (explain in Sch. I) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
	\$	\$	\$	\$
1. Totals	\$	\$	\$	\$
2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)				

Schedule H.—OTHER INCOME OR LOSSES

1. Partnerships (name, address, and nature of income)	PITTSBURGH PROPERTIES Co	2,809 27
	4 PARK AVE. N.Y.C.	
2. Estates or trusts (name and address)		
3. Other sources (state nature)		
Total income (or loss) from above sources (Enter here and on line 10, page 1)		55,790 07

610-16-76136-1

PLAINTIFFS' EXHIBIT 3

NAME NED & FRANCES MILLER YEAR ENDED 1960
ADDRESS 7302 AVE N FILE NO. _____
BKLYN 10 NY FOLIO _____
FORM _____

[illegible]

INCOME FROM INTEREST		FEDERAL			STATE		
NAME OF PAYOR		AMOUNT			AMOUNT		
SAVINGS BANKS:		\$			\$		
DIME			395	-			
EAST BKLYN			311	51			
KINGS HWAY			732	23			
SOUTH BKLYN			750	20			
PITTSBURGH PROPERTIES CO.			701	86			
STATE OF ISRAEL BONDS			90	-			
TOTAL			2990	80			

CYPRESS NO. 480

PLAINTIFFS' EXHIBIT 3

WED & FRANCES MILLER
1304 AVE N
BKLYN 10 NY

1960

MEDICAL EXPENSE

DR THOMAS N CROSS	750-
DR SAMUEL A WOLFE	75-
DR DANIEL GENNES	150-
DR SAMUEL ZALDIN	75-
DR NELSON	10-
DR M A SILVERMAN	51-
MT SINAI HOSPITAL	75-
DR BERNARD D FINE	1100-
DR S PECK	15-
TOTAL	<u>2211-</u>

PLAINTIFFS' EXHIBIT 3

COPY

FORM 1040

U.S. INDIVIDUAL INCOME TAX RETURN 1961

U.S. Treasury Department
Internal Revenue Service

or taxable year beginning 1961, ending 1961, ending 1961

Your Social Security Number	055 01 9461
Occupation	EXECUTIVE
Wife's Social Security Number	
Occupation	

• Attach Check or Money Order Here •

First name and initial AED F FRANCES	Last name MILLER
(If joint return of husband and wife, use first names and middle initials of both)	
Home address 1305 FIVE 11	
(Number and street or rural route)	
BKLYN	NY
(City, town, or post office)	(State)

Check ☐ Single; ☐ Unmarried "Head of Household"; ☐ Surviving widow or widower with dependent child;
One ☒ Married filing joint return; ☐ Married filing separate return—Name of wife (husband)

INCOME—(If joint return, include all income of both husband and wife)

1. Wages, salaries, tips, etc., and excess of allowances over business expenses.	(a) Wages, etc.	(b) Federal income tax withheld
Employer's name MILLER-STERNGUARD CORP.	Where employed (city and state) BKLYN, NY	
	\$ 39,000 -	\$ 7,004 40
If either you or your wife worked for more than one employer, see page 4 of instructions		
	39,000 -	7,004 40
2. Totals here		
3. "Sick pay" if included in line 1 (attach required statement)		
4. Subtract line 3 from total wages		39,000 -
5. Dividends, interest, rents, royalties, pensions, etc. (Schedule B—if required by instructions page 5)		6,557 00
6. Business income (Schedule C)		
7. Sale or exchange of property (Schedule D)		
8. Farm income (Schedule F)		
9. Total (add lines 4 through 8)		45,557 00

• Attach Copy B of Forms W-2 Here •

FIGURE YOUR TAX BY USING EITHER 10 OR 11	
10. Tax Table	11. Tax Rate Schedule
If line 9 is more than \$5,000 and you do not itemize deductions— Copy line 9 from page 2 here— Find your tax in table on page 10 of instructions. Do not use lines 11 a, b, c, or d. Enter tax on line 12.	a. If you itemize deductions, enter total from page 2 If line 9 is \$5,000 or more and you do not itemize, enter 10% of line 9 but not more than \$1,000 (\$500 if married and filing separate return). b. Subtract line 11a from line 9 c. Copy total exemptions from page 2 here <u>4</u> , multiply by \$600. d. Subtract line 11c from line 11b Figure your tax on this amount by using tax rate schedule on page 9 of instructions and enter tax on line 12.
	11,157 00
	34,400 -
	2,400 -
	32,000 -
	10,400 -
	10,400 -

12. Tax (from either tax table or tax rate schedule)	
13. Self-employment tax (Schedule C-3 or F-1)	
14. Total (add lines 12 and 13)	

PAYMENTS AND CREDITS

15. a. Tax withheld (line 2, col. (b) above). Attach Forms W-2	7,004 40
b. Payments and credits on 1961 Declaration of Estimated Tax	1,800 -
c. Dividends received credit	
d. Retirement income credit	
e. Other credits (Specify—see page 5 of instructions)	
f. Total (add lines a, b, c, d and e)	8,804 40
District Director's office where amount on line 15b was paid BKLYN, NY	

TAX DUE OR REFUND

16. If payments and credits (line 15f) are less than tax (line 14), enter Balance Due here	1,595 60
Pay in full with this return to "Internal Revenue Service."	
17. If payments and credits (line 15f) are larger than tax (line 14), enter Overpayment here	
18. Line 17 to be: (a) Credited on 1962 estimated tax \$; (b) Refunded \$	

I declare under penalty of perjury that I have examined this return (including accompanying schedules and statements) and in the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here (Taxpayer's signature and date) (If joint return, BOTH HUSBAND AND WIFE MUST SIGN) (Wife's signature and date)

Sign here (Signature of preparer other than taxpayer) (Address) (Date)

NEW YORK
100-10-76677-1

PLAINTIFFS' EXHIBIT 3

FORM 1040-1961

SCHEDULE A.—EXEMPTIONS (See page 6 of instructions)

Page 2

1. Exemptions for yourself—and wife (only if all her income is included in this return, or she had no income)

Check blocks which apply.

(a) Regular \$600 exemption ☒ Yourself ☒ Wife

(b) Additional \$600 exemption if 65 or over at end of 1961 ☐ Yourself ☐ Wife

(c) Additional \$600 exemption if blind at end of 1961 ☐ Yourself ☐ Wife

Enter number of exemptions checked → 7

2. Exemptions for your children and other dependents (list below)

• If an exemption is based on a multiple-support agreement of a group of persons, attach the declarations described on page 6 of instructions.

NAME Enter figure 1 in the last column to right for each name listed (Give address if different from yours)	Relationship	ANSWER ONLY FOR DEPENDENTS OTHER THAN YOUR CHILDREN				Amount furnished by OTHERS including dependent	
		Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have income of \$600 or more?	Amount YOU furnished for dependent's support. If 100% write "ALL"			
LILLIAN MILLER	SISTER	0	(N)	\$ ALL	\$	1	
JEAN	DAUGHTER					1	

3. Total exemptions. (Enter here and on line 10 or 11c, page 1) → 7

ITEMIZED DEDUCTIONS—If you do not use tax table or standard deduction

If husband and wife (not legally separated) file separate returns and one itemizes deductions, the other must also itemize

Show to whom paid. If necessary, write more than one item on a line or attach additional sheets. Please put your name and address on any attachments

SEE SCHEDULE ATT

Contributions
(If other than money, submit description of property and method of valuation)

Total paid (not to exceed 20% of line 9, page 1, except as described on page 7 of instructions) \$ 1854 -

Interest

Total interest 1,625 -

Taxes

Real estate taxes 1,625.67 State income taxes 1,625.67

State and local sales taxes 330.00 Other taxes (specify)

Total taxes 4,620.34

Medical and dental expense
(Submit itemized list. Do not enter any expense compensated by insurance or otherwise)

NOTE: If you or your wife are 65 or over, or if either has a dependent parent 65 or over, see page 8 of instructions for possible larger deduction.

1. Total cost of medicine and drugs	\$	
2. Enter 1% of line 9, page 1		
3. Subtract line 2 from line 1		
4. Other medical and dental expenses (including hospital insurance premiums)	4,317 -	
5. Total (add lines 3 and 4)	4,317 -	
6. Enter 3% of line 9, page 1	\$ 1,266.71	
7. Subtract line 6 from line 5; see page 8 of instructions for maximum limitation	3,050.29	

Other deductions
(See page 8 of instructions and attach required information)

SALE DEPOSIT FOR RENTAL 22 -

Total 33 -

ITEMIZED DEDUCTIONS (Enter here and on line 11a, page 1) \$ 7,115.93

EXPENSE ACCOUNT INFORMATION

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ... ☒ Yes ☐ No

If "Yes," did you submit itemized accounting of expenses to your employer? ... ☒ Yes ☐ No

See page 4, instructions.

U.S. GOVERNMENT PRINTING OFFICE

509-10-74677-1

PLAINTIFFS' EXHIBIT 3

SCHEDULE B (Form 1040)		SUPPLEMENTAL SCHEDULE OF INCOME AND CREDITS (From all sources other than wages, business, farming, and sale or exchange of property)		1961
U.S. Treasury Department Internal Revenue Service		Attach this Schedule to your Individual Income Tax Return, Form 1040		
Name and address as shown on page 1 of Form 1040: <u>NED FRANCES PILLEN, YOUNG MEN'S CLUB, NEW YORK, N.Y.</u>				
Part I.—DIVIDEND INCOME (Income from savings (building) and loan associations and credit unions should be entered as interest in Part II.)				
1. Name of qualifying corporation declaring dividend: (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)	Amount			
2. Total.....				
3. Exclusion of \$50 (If both husband and wife received dividends, each is entitled to exclude not more than \$50 of his (her) own dividends)				
4. Subtract line 3 from line 2. Enter here and on line 1, Part VII				
5. Name of nonqualifying corporation declaring dividend:				
6. Total (add lines 4 and 5).....	→			
Part II.—INTEREST INCOME (This includes interest credited to your account)				
Name of payer	Amount	Name of payer	Amount	
PITTSBURGH TRUST CO.	465.62	EAST RAILWAY	333.55	
SAVINGS BANK		MOREY & CO.	70.30	
BANK OF AMERICA	790.63	KINGS HAVEN	770.93	
CITY SAVINGS	601.06	Total →		3,040.11
Part III.—PENSION AND ANNUITY INCOME				
A.—General Rule (If you did not contribute to the cost of the pension or annuity, enter the total amount received on line 6 and omit lines 1 through 5.)				
1. Investment in contract.....		4. Amount received this year.....	\$	
2. Expected return.....		5. Amount excludable (line 4 multiplied by line 3)		
3. Percentage of income to be excluded (line 1 divided by line 2).....%		6. Taxable portion (excess of line 4 over line 5)		
B.—Where your employer has contributed part of the cost and your contribution will be recovered tax-free within 3 years. If your cost was fully recovered in prior years, enter the total amount received in line 5 and omit lines 1 through 4.				
1. Cost of annuity (amounts you paid)		4. Amount received this year.....		
2. Cost received tax-free in past years		5. Taxable portion (excess, if any, of line 4 over line 3)		
3. Remainder of cost (line 1 less line 2)				
Part IV.—RENT AND ROYALTY INCOME				
1. Kind and location of property (Identify whether rent or royalty)	2. Total amount of rents or royalties	3. Depreciation (explain in Part VI) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
1. Total.....				
2. Net (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)				
Part V.—OTHER INCOME OR LOSSES				
1. Partnerships (name, address, and nature of income): <u>Pittsburgh Properties Co., 123 W. 14th St., New York, N.Y.</u>	3,576.00			
2. Estates or trusts (name and address).....				
3. Other sources (state nature).....				
TOTAL INCOME (OR LOSS) FROM ABOVE SOURCES (Enter here and on line 5, page 1, of Form 1040) 6,557.11				

PLAINTIFFS' EXHIBIT 3

NAME NGO F FRANCES MILLER

ADDRESS 2307 FIVE N

BKLYN 10 NY

Taxable Year Ended 12/31/61

CHARITABLE CONTRIBUTIONS				
FEDERATION OF JEWISH PHILANTHROPIES		575 -		
UNITED JEWISH APPEAL		225 -		
TEMPLE ANAVATH CHOLON		385 -		
NY BOARD OF RABBS		145 -		
SUNDRY ORGANIZED CHARITIES		225 -		
TOTAL			1855 -	
MEDICAL EXPENSE				
DR Y C CHU		15 -		
DR SAMUEL PECK		150 -		
DR BERNARD D FINE		3,560 -		
Mt SINAI HOSPITAL		75 -		
DR SAMUEL ZALDIN		95 -		
DR SAMUEL A WOLFE		10 -		
DR DANIEL GENNES		169 -		
DR THOMAS N CROSS		30 -		
DR GEORGE FREDMAN		200 -		
DR MILTON S TRAVIN		35 -		
DR ISAAC SKER		15 -		
SUNDRY PHYSICIANS		23 -		
TOTAL		4385 -		

CYPR-55 NO. 503

PLAINTIFFS' EXHIBIT 3



*See 1-1-1
Certified
Mail
789602*

Internal Revenue
Service Center S ADV
North-Atlantic Region

Date:

May 20, 1968

In reply refer to:

RSC 105

Ned & Frances Miller
35 Seacoast Terrace
Brooklyn, NY 11235

CERTIFIED MAIL

Social Security Number or Employer Identification Number: not given
Document Locator Number: ---
Type of Tax: 1040
Period Ending: 1957
Amount Claimed: 37,923.75
Date Claim Received: May 12, 1966

Dear Taxpayer:

We received your claim for an adjustment of your taxes. I am sorry to tell you that we cannot allow your claim. This decision rests on certain provisions of the internal revenue laws and regulations.

Hence, I have sent this letter to you by certified mail. This letter is your legal notice from Internal Revenue that your claim has been officially rejected. It has been disallowed in full.

If you still disagree, and wish to begin suit or proceeding for the recovery of any taxes, penalties, or other moneys for which this notice of disallowance is issued, the law requires you to do so within two years from the mailing date of this letter.

Sincerely yours,

Wm. E. Merrill

Director, Service Center

COPIED EXHIBIT 11

PLAINTIFFS' EXHIBIT 4 - LETTER DATED MAY 20, 1968



Rec 5/25/68
Certified
mail
789 602

Address any reply to:

P.O. Box 468, Andover, Mass. 01810

US Treasury Department

**Internal Revenue
Service Center** S ADJ
North-Atlantic Region

Date:

May 20, 1968

In reply refer to:

RSC 105

Ned & Frances Miller
35 Seacoast Terrace
Brooklyn, NY 11235

CERTIFIED MAIL

Social Security Number or Employer Identification Number: not given
Document Locator Number: ---
Type of Tax: 1040
Period Ending: 1957
Amount Claimed: 37,923.75
Date Claim Received: May 12, 1966

Dear Taxpayer:

We received your claim for an adjustment of your taxes. I am sorry to tell you that we cannot allow your claim. This decision rests on certain provisions of the internal revenue laws and regulations.

Hence, I have sent this letter to you by certified mail. This letter is your legal notice from Internal Revenue that your claim has been officially rejected. It has been disallowed in full.

If you still disagree, and wish to begin suit or proceeding for the recovery of any taxes, penalties, or other moneys for which this notice of disallowance is issued, the law requires you to do so within two years from the mailing date of this letter.

Sincerely yours,

Thomas E. Merrill

Director, Service Center



Form RSC-105 (REV. 10-67)

DEFENDANT'S EXHIBIT C - CLAIM FOR REFUND

May 5, 1966

Internal Revenue Service
35 Tillary Street
Brooklyn, New York

In re: Claim for Refund, Form 843 of
Ned and Frances Miller
for Year 1957

Gentlemen:

There is enclosed herein a claim for
refund for the above mentioned clients for year
1957.

Please acknowledge receipt of this claim
by stamping a copy of this letter and a copy of
the claim.

Very truly yours,

Irving Frederick

Encl.
IF:eaf



DEFENDANT'S EXHIBIT C - CLAIM FOR REFUND

(Date Received)

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE
ASSESSMENT WAS MADE OR TAX PAID

Indicate in the block below the kind of claim filed, and fill in where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessment (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or name of estate
Ned and Frances Miller

Number and street
35 Seacoast Terrace, Apt. 18-1

City, town, State, Postal ZIP Code
Brooklyn, New York 11235

Fill in applicable items—attach letter size sheet if space is not sufficient

a. Your social security number
055 01 9461

Wife's number, if joint return

b. If an employer, enter employer identification number

c. District in which return (if any) was filed

d. Name and address shown on return, if different from above

Brooklyn

Ned and Frances Miller
2302 Avenue "N", Brooklyn, New York

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From January 1, 1957, to December 31, 1957

f. Kind of tax
Income

g. Amount of assessment
\$ 37,923.75

h. Dates of payment
6/15/54, \$30,468.00; 6/29/54, \$21,519.65 (includes Interest)

i. Date stamps were purchased from Government

j. Amount to be refunded (if income tax, complete computation below)
\$ 37,923.75

k. Amount to be abated (not applicable to income, estate, or gift taxes)
\$

l. The claimant believes that this claim should be allowed for the following reasons:

See Rider Attached.

RECEIVED
MAY 13 1958
DIST. DIR. OF INT. REV.
BROOKLYN 1, N.Y.
#4

COMPUTATION OF INCOME TAX REFUND

Income Tax

1. Tax withheld	
2. Estimated tax paid	
3. Tax paid with original return	
4. Any additional income tax paid	
5. Total tax paid (Add lines 1-4)	
6. Less: Your computation of correct tax	
7. Amount of overpayment	
8. Amount previously refunded	
9. Net overpayment (Enter in item 1 above)	

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct.

Signed

Dated, 19.....

SEE INSTRUCTIONS ON REVERSE

FORM 843 (Rev. 7-65)

DEFENDANT'S EXHIBIT C - CLAIM FOR REFUND

SCHEDULE ATTACHED TO CLAIM FOR REFUND - Ned and Frances Miller
35 Seacoast Terrace
Apartment 18-B
Brooklyn, New York 11235

Claim for refund is made herein for year 1957 since the Revenue Agent who examined that year picked up as dividends the amount of \$65,000.00 allegedly paid by the 1680 Coney Island Avenue Realty Corporation. In fact, the said payment did not represent dividends but was a result of the manipulations of his accountant named David Rausch who allegedly embezzled funds from Ned Miller and related corporations.

If in fact there is a dividend of \$65,000.00 that dividend would have been earned in year 1955 as a payment from Miller Stormguard Corporation, which corporation lent Mr. Ned Miller \$65,000.00 in that year.

The amount of additional tax assessed by the Revenue Agent in his report for year 1957 was \$37,923.75. This tax plus interest in the amount of \$14,063.90 computed to June 30, 1964 was paid and this claim herein requests refund of both the tax and the interest.

The computation of income tax refund on the face of this claim cannot be filled out since we do not have a copy of the original tax return filed nor do we have a copy of the Revenue Agent's report.

DEFENDANT'S EXHIBIT D - CLAIM FOR REFUND

FORM 843 <small>(Rev. Mar. 1960)</small>	U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE <h2 style="margin: 0;">CLAIM</h2> <p style="margin: 0;">TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID</p>	District Director's Stamp <small>(Date received)</small>
The District Director will indicate in the block below the kind of claim filed, and fill in, where required.		
<input checked="" type="checkbox"/> Refund of Taxes Illegally, Erroneously, or Excessively Collected. <input type="checkbox"/> Refund of Amount Paid for Stamps Unused, or Used in Error or Excess. <input type="checkbox"/> Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).		
PLEASE TYPE OR PRINT PLAINLY		
Name of taxpayer or purchaser of stamps NED MILLER and FRANCES MILLER		
Number and street 35 SeaCoast Terrace		City, town, postal zone, State Brooklyn, New York 11235
Fill in applicable items—Attach letter size sheets if space is not sufficient		
1. Social security number SS-055-01-9461	2. If an employer, enter employer identification number	
3. District in which return (if any) was filed Brooklyn	4. Name and address shown on return, if different from above same as above	
5. Period—if for tax reported on annual basis, prepare separate form for each taxable year From Jan. 1st 19 57 To Dec. 31st 19 61		6. Kind of tax Income
7. Amount of assessment \$53,412.21	Date of payment June 1964	
8. Date stamps were purchased from Government	9. Amount to be refunded \$53,412.21	10. Amount to be abated (not applicable to income, estate, or gift taxes) \$
11. The claimant believes that this claim should be allowed for the following reasons:		

SEE ATTACHED RIDER

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed

NED MILLER

Frances Miller

Dated **December 31, 1964**

INSTRUCTIONS

1. The claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.
2. If a joint income tax return was filed for the year for which this claim is filed, enter social security and employer identification number, if any, of both husband and wife and each must sign this claim even though only one had income.
3. Whenever it is necessary to have the claim executed by an agent on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent to sign the claim on behalf of the taxpayer shall accompany the claim.
4. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other

fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

6. If claim is for excess social security (F.I.C.A.) tax withheld as a result of having had more than one employer, include the names and addresses of your employers, and the amount of wages received and taxes withheld by each as part of your explanation in item 11. Do not claim tax withheld if you have claimed the excess withholding on your individual income tax return.

FORM 843 (Rev. 3-60)

DEFENDANT'S EXHIBIT D - CLAIM FOR REFUND

CLAIM FOR REFUND

(Form No. 843, Rider)

(A). The claimants', Ned and Frances Miller, joint tax returns were audited and reassessed for the years 1957, 1960 and 1961 by a Fraud Agent of the Internal Revenue Service on or about March 27, 1964; which audit and examination apparently disclosed a deficiency in the reportable income for the years in question.

(B). This audit and investigation was as a result of a "Voluntary Disclosure" the claimant, Ned Miller, made to the Internal Revenue Service concerning 1680 Coney Island Avenue Realty Corporation, of which he was the principal officer and stockholder.

(C). That since 1930 the claimant, Ned Miller, had retained and hired David Rausch to act as his personal and business accountant and adviser and completely and exclusively relied upon his advice, counsel and judgment in all financial and tax matters, because he was not knowledgeable; and for all of which Mr. Rausch was adequately and reasonably paid.

(D). That in 1968 the claimant, Ned Miller, became suspicious of certain actions of Mr. Rausch and

DEFENDANT'S EXHIBIT D - CLAIM FOR REFUND

caused an independent audit of the books and records to be done. As a result of which it was discovered that 1680 Coney Island Avenue Realty Corp. had never filed Tax Returns with the State of New York or the Federal Government, and further, was disenfranchised by Proclamation.

(E). That in examining and auditing the books and records of 1680 Coney Island Avenue Realty Corporation, the Tax Examiner determined that a \$65,000.00 transaction (check) in 1957 was a dividend to the claimants and therefore their personal tax return for 1957 was deficient in reportable income; and an assessment, together with interest was made against the claimants.

(F). The Taxpayers make this Claim for Refund on the basis that the alleged deficiency in income reported by the tax-examiner is contrary to the facts and law; and that therefore the assessment which was imposed, together with interest is unreasonable, inequitable and erroneous.

(G). The Claimants, Ned and Frances Miller, relied upon the advice and counsel of David Rausch,

DEFENDANT'S EXHIBIT D - CLAIM FOR REFUND

their personal and business accountant and adviser, in this transaction and since there was no direct benefit to the claimants the \$65,000.00 should not have been treated as a dividend to them.

(H). The claimants contend that the actions, advice and counsel of David Rausch, in this transaction and those affecting 1680 Coney Island Avenue Realty Corp. and Miller Stormguard Corp., was a scheme, plan and device to defraud and destroy the claimants and their corporate entities; all of which has been fully and completely disclosed to the Intelligence Agents of the Internal Revenue Service.

(I). Accordingly the claimants respectfully request that their Claim for Refund be considered and determined as soon as possible in the spirit of justice and equity.

DEFENDANT'S EXHIBIT E - CLAIM FOR REFUND

<p>TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID</p>	
<p>The District Director will indicate in the blank below the kind of claim filed, and fill in, where required.</p>	
<p><input checked="" type="checkbox"/> Refund of Taxes Illegally, Erroneously, or Excessively Collected. <input type="checkbox"/> Refund of Amount Paid for Stamps Unused, or Used in Error or Excess. <input type="checkbox"/> Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).</p>	
<p>PLEASE TYPE OR PRINT PLAINLY</p>	
<p>Name of taxpayer or purchaser of stamps NED & FRANCES MILLER</p>	
<p>Number and street 2312 Avenue N</p>	<p>City, town, postal zone, State Brooklyn 11210 New York</p>
<p>Fill in applicable items—Attach letter size sheets if space is not sufficient</p>	
<p>1. Social security number</p>	<p>2. If an employer, enter employer identification number</p>
<p>3. District in which return (if any) was filed Brooklyn</p>	<p>4. Name and address shown on return, if different from above SAME AS ABOVE</p>
<p>5. Period—If for tax reported on original basis, prepare separate form for each taxable year From Jan 1st 1957 to December 31st 1961</p>	<p>6. Kind of tax INCOME</p>
<p>7. Amount of assessment \$53,412.21</p>	<p>8. Date of payment June 1964</p>
<p>9. Date stamps were purchased from Government</p>	<p>10. Amount to be abated (not applicable to income, estate, or gift taxes) \$53,412.21</p>
<p>11. The claimant believes that this claim should be allowed for the following reasons:</p>	

SEE ATTACHED RIDER

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed **NED & FRANCES MILLER**

Dated **October** 19**64**

INSTRUCTIONS

- The claim must set forth in detail on what ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.
- If a joint income tax return was filed for the year for which this claim is filed, enter social security and employer identification number, if any, of both husband and wife and each must sign this claim even though only one had income.
- Whenever it is necessary to have the claim executed by an agent on behalf of the taxpayer, an authorized copy of the document specifically authorizing such agent to sign the claim on behalf of the taxpayer shall accompany the claim.
- If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other

fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

6. If claim is for excess social security (F.I.C.A.) tax withheld as a result of having had more than one employer, include the name and address of your employer, and the amount of wages received and taxes withheld by each as part of your explanation in item 11. Do not claim tax withheld if you have claimed the excess withholding on your individual income tax return.

DEFENDANT'S EXHIBIT E - CLAIM FOR REFUND

CLAIM FOR REFUND
(Form No. 843, Rider)

(A). The claimants' joint individual tax returns were audited for the year 1957, 1960, 1961 and 1962 by William Krebs, Examiner, U. S. Treasury Department, Internal Revenue Service, on or about March 27th, 1964. On April 9th, 1964, the claimants received Form L-15 from the District Director, notifying them as a result of said audit and examination, the Examiner's records disclosed a deficiency in the reportable income for the said years covered by the audit.

(B). Subsequently, the claimants received Form No. 17-A, indicating a statement of tax due as a result of this deficiency as follows:

YEAR	ASSESSMENT	INTEREST	BALANCE DUE
1957	\$37,923.75	\$13,665.02	<u>\$51,588.77</u>
1960	\$ 773.67	\$ 139.51	\$ 913.18
1961	\$ 812.50	\$ 97.76	\$ 910.26
	<u>\$39,509.92</u>	<u>\$13,802.29</u>	<u>\$53,412.21</u>

*Defense paid
\$51,588.77
on 6/5/65*

*39171
51987
918 29*

During the month of June, the taxpayers satisfied this income tax liability by paying the above sum in full.

(C). The taxpayers make this claim for refund on the basis that the alleged deficiency in income reported by Examiner Krebs is contrary to the facts and the law, and that therefore the assessments imposed, together with interest, are erroneous.

DEFENDANT'S EXHIBIT E - CLAIM FOR REFUND

Page Two.

(D). Taxpayer Ned Miller is the principal stockholder and an officer of 1680 Coney Island Avenue Realty Corp., which has its principal place of business at 1680 Coney Island Avenue, Brooklyn, New York. He is also a limited partner of the Pittsburg Properties, located at 2 Park Avenue, New York County, N. Y. His interest in this partnership is limited to one unit, which is the equivalent of 5% of the total capitalization of the partnership.

(E). The 16080 Coney Island Avenue Realty Corp. is a corporation duly organized under the laws of the State of New York, for the purposes of conducting a general real estate business, including the investments and development of real estate. Pittsburg Properties was a limited partnership formed for the purpose of the development, ownership, and management of commercial property in the City of Pittsburgh, Pennsylvania. It was formed during the year 1957, under the laws of the State of Pennsylvania, and had its principal office of business in Pittsburgh, Pennsylvania.

(F). Under Pennsylvania law, a limited partnership or joint venture is prohibited from soliciting investment or capitalization funds from a corporation. Further, even though the purposes clause of a particular corporation authorizes its Officers and Directors to invest corporate funds in limited partnerships or joint ventures indiscriminately, and in any

DEFENDANT'S EXHIBIT E - CLAIM FOR REFUND

Page Three.

state or country, the Pennsylvania law estopped limited partnerships or joint ventures organized under its laws from accepting said funds on the penalty of dissolution and loss of limited partnership or joint venture status in that state.

(G). Originally, the 1680 Coney Island Avenue Realty Corp., through its Board of Directors, duly authorized its officers to make an investment in the corporate name in the Pittsburg Properties partnership. A check in the amount of \$65,000.00 was duly drawn on the corporate bank account and forwarded to said Pittsburg Properties partnership. Shortly thereafter, this check was returned to the 1680 Coney Island Avenue Realty Corp. by one of the partners of Pittsburg Properties, with the notification that such an investment was in violation of the Pennsylvania law and would subject the partnership to possible dissolution should this investment stand.

(H). On advice of counsel, the taxpayer Ned Miller was induced to act as an accommodation party, or a conduit, through which the investment in the partnership would flow. Thereafter, a check in the amount of \$65,000.00 was drawn to his, Miller's, order, and he in turn promptly drew a check over to the order of Pittsburg Properties for the same amount. This \$65,000.00 transaction was treated by Examiner Krebs as "income to taxpayers on Form 1907", because, "distribution received from 1680 Coney Island Avenue Realty Corp. deemed to be a dividend in 1957."

Page Four.

(4). The testimony before the Examiner, the corporate certificate and by-laws of the 1680 Coney Island Avenue Realty Corp. made available to the Examiner, the lists of transactions during the years of incorporation of 1680 Coney Island Avenue Realty Corp. submitted to the Examiner, all clearly indicated that this corporation was in the business of buying, selling, holding and developing, and investing in real estate, and being continually involved in real estate transactions. In addition thereto, there was disclosed and submitted evidence indicating the attempt of 1680 Coney Island Avenue Realty Corp. to, in its own name, invest in the limited partnership known as Pittsburg Properties. Further, it was shown that subsequently a check was drawn to Mr. Miller's order by 1680 Coney Island Avenue Realty Corp., and he promptly drew a check over to the partnership business in the exact amount. It is obvious that there would have been no tax imposed on 1680 Coney Island Avenue Realty Corp. had it been enabled to make a direct investment in Pittsburg Properties. Therefore, since there was no showing that there was a direct benefit accruing to Mr. Miller as a result of this transaction, and that because of the fact that this was a simultaneous transaction, Mr. Miller was merely a conduit or accommodation party or an agent for an undisclosed principle in this matter.

DEFENDANT'S EXHIBIT E - CLAIM FOR REFUND

Page Five.

(J). Accordingly, the claimant alleges that the \$65,000.00 was treated erroneously as a dividend to them, when, in fact, based on the evidence, it was a sum sent in trust to him for investment in a limited partnership, organized under Pennsylvania law, which prohibited corporations from investing in limited partnerships, and he in fact acted as an agent for an undisclosed principle, and as an accommodation party who received no benefit from this transaction.

DEFENDANT'S EXHIBIT E - CLAIM FOR REFUND

MAR 19 1966

I don't
believe this
was ever
filed as
facts were
not true
and I
would not
sign it

M

THIS CLAIM DOES
NOT HAVE CORRECT
FACTS.

6-9

DEFENDANT'S EXHIBIT G - REPORT OF CLAIM DISALLOWANCE

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE				DATE OF PREP.	
PRELIMINARY STATEMENT				11-15-57	
NAME OF TAXPAYER			NAME OF EXAMINER		
Ned & Frances Miller			William Kien		
SUMMARY OF PROPOSED ADJUSTMENTS					
YEAR ENDED (OR PERIOD)	INCOME TAX		OTHER TAX (Specify) DEF. OR (O/A)	PENALTIES INCREASE OR (DECREASE)	PARTNERSHIP OR FIDUCIARY INCOME INCREASE OR (DECREASE)
	DEFICIENCY	OVERASSESSMENT			
12/31/57	No Change - Claim Disallowed in Full				
TOTALS	\$	\$	\$	\$	\$
NET DEFICIENCY (Overassessments)			AGREEMENT SECURED		
			None		
			I. Fredericks, C.P.A.		
PRINCIPAL CAUSES OF CHANGES, AND OTHER INFORMATION					
<p>Form 143 filed does not indicate any new evidence or facts that would make the distribution of \$5,000 N. Miller received from 1680 Carey Island Anne Kelly Cup a non-taxable event.</p>					
SCHEDULES AND/OR EXHIBITS ATTACHED					

DEFENDANT'S EXHIBIT G - REPORT OF CLAIM DISALLOWANCE

TRANSMITTAL LETTER		TOTAL TIME SPENT HRS.
ON LATEST RETURN ENCLOSED	PLACE OF AUDIT New York	DATE OF REPORT 11-23-56
Frances Miller Avenue N Bklyn. NY	TYPE OF AUDIT <input checked="" type="checkbox"/> FIELD <input type="checkbox"/> OFFICE	RETURN FORM NO.
	DATE AGREEMENT FILED None	COMPUTATION VERIFIED 11/1
PRESENT NAME AND ADDRESS, IF DIFFERENT FROM THAT ON LAST RETURN Ned & Frances Miller 35 Seacoast Terrace Brooklyn, NY	RELATED CASES 100 Taxp. I had the Rully Corp. U.S. Unincorporated Company - FJE 10/1/55-52-1 FJE 10/1/55-52-1 FJE 10/1/55-52-1 FJE 10/1/55-52-1	

YEAR ENDED (OR PERIOD)	INCOME TAX		OTHER TAX (Specify) DEF. OR (O/A)	PENALTIES	PART. OR FIDUC. INCOME - INCR. OR (DECR.)	DISTRICT WHERE FILED
	DEFICIENCY	OVERASSESSMENT				
12-31-57	No Change	Claim	Disallowed in Full			
TOTALS	\$	\$	\$	\$	\$	\$

NATURE OF BUSINESS Executive	EXAMINATION DISCUSSED WITH
LAST PRIOR EXAMINATION DATE 3-27-64	YEARS REEXAMINED OR SUPPLEMENTED
YEAR(S) COVERED 1957, 60, 61, 64	
EXAMINER W. Kraps	
ACCOUNTING METHOD C-34	BAD DEBT METHOD - HOW ELECTED
CONSENTS (Expiration dates)	CLAIMS (Dates, years covered)
	1957-5/1/66

OTHER FACTORS EXTENDING STATUTORY PERIOD OF LIMITATIONS

REGIONAL OR NATIONAL OFFICE CORRESPONDENCE

OTHER INFORMATION (Attach additional sheets if necessary)

taxpayer filed timely claim on 5/1/66. Based upon agreed
RAR dated 3/1/66 for years 1957, 60, 61 and payments
made for 1957 liability on following dates

ENCLOSURES Form 843 Power Attorney W. Kraps	APPROVED BY (Signature of reviewer) Saul Weiss & Co. Inc.
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U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

DEFENDANT'S EXHIBIT G - REPORT OF CLAIM DISALLOWANCE

886-A MAY 1960 TRANSLUCENT	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT TV
NAME OF TAXPAYER Ned Frances Miller		YEAR ENDED/PERIOD 1952
Per Form 809 - Recd. of Payment of Taxes	6-15-64	30468.00
R. L. Pine Savings Bank Acct # 5011	6-29-64	10502.51
" " " " # 167,051	6-29-64	11017.73
Total Payments for 1952 Audit		51988.25
Deficiency - R.R.R.		37923.75
Interest.		14063.90
		51988.15

Form 843 Ned states payment made of \$5,000 by 1680 Gray Island Merc Realty does not represent dividends but was a result of the manipulation of his prior accountant, and since there was no direct benefit to the claimants the \$5,000 should not be treated as a dividend.

This claim has been disallowed on the facts show that taxpayer did receive direct benefits from this distribution. Furthermore no new evidence has been submitted since agreed R.A.R. covering this issue was submitted. The circumstances surrounding this distribution were fully covered in the transmitted letter of 1680 Gray Island Merc Realty Corp sent submitted on 3/2/54. A summary of the facts are as follows:

On June 3, 1955 Miller Savings Corp (now owned by Ned Miller) disbursed their check

DEFENDANT'S EXHIBIT G - REPORT OF CLAIM DISALLOWANCE

886-A MAY 1960 TRANSLUCENT	TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE EXPLANATION OF ITEMS	SCHEDULE NO. 99 EXHIBIT 7
NAME OF TAXPAYER Ned & Frances Miller		YEAR ENDED/PERIOD 1957

3944 payable to Ned Miller for \$65,000
This was recorded in Miller Skymguard Corp books as a loan due from Ned Miller. In addition N Miller gave the Skymguard Corp his own personal note for \$65,000 bearing interest of 2 1/2 % on this demand note.

The taxpayer used the proceeds of this loan to make a personal investment in a syndicated venture called Pittsburgh Properties, Inc. Income received from this venture has been reported annually on the personal tax returns filed by Ned Miller.

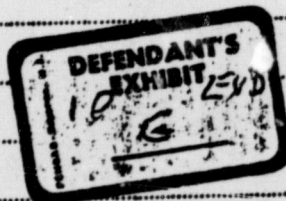
On December 16, 1957 check # 683 was drawn on 1680 Grey Island Home Realty Corp's bank account for \$65,000 payable to Ned Miller. The check was endorsed by Ned Miller and deposited into the Miller Skymguard Corp. bank account and reflected on their books as repayment of the 1955 loan. This repayment of a personal obligation of Ned Miller by the realty corporation has been deemed a dividend to Ned Miller in the year 1957. No repayment of this amount has been made to the realty corporation by N. Miller.

Analysis of earnings from date of incorporation of realty corporation and analysis of partial surplus account to date showed sufficient

FORM 886-A (REV. 5-60) TRANSLUCENT

DEFENDANT'S EXHIBIT G - REPORT OF CLAIM DISALLOWANCE

<p>886-A REV. MAY 1960 TRANSLUCENT</p>	<p>TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE EXPLANATION OF ITEMS</p>	<p>SCHEDULE M, OR EXHIBIT 74</p>
<p>NAME OF TAXPAYER</p>		<p>YEAR ENDED/PERIOD</p>
<p>Ned & Frances Miller surplus of 12/31/57 to deem the entire 65,000 as an ordinary dividend.</p>		<p>1957</p>
<p>Taxpayer has signed and submitted Form 2297 waiving statutory notice of claim disallowance.</p>		
<p></p>		
<p></p>		



MEMORANDUM DECISION
COSTANTINO, J. - NOVEMBER 25, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----x

NED MILLER and FRANCES MILLER,

Plaintiffs,

69-C-715

v.

MEMORANDUM and
ORDER

UNITED STATES OF AMERICA,

NOVEMBER 25, 1975

Defendants.
-----x

COSTANTINO, D.J.

This is an action by a husband and wife for the recovery of federal income taxes and interest in the amount of \$37,923.75 paid with respect to plaintiffs' 1957 calendar year tax liability. This case was tried without a jury on April 5, 1973. The following constitutes this court's findings of fact and conclusions of law pursuant to Rule 52(a), Fed.R.Civ.P.

Findings of Fact

In the years 1955-57, plaintiff taxpayer Ned Miller owned all the stock of two companies, 1680 Coney Island Avenue Realty Corporation ("Realty") and Miller Stormguard Corporation ("Stormguard"). Mr. Miller was President and chief executive officer of both corporations.

MEMORANDUM DECISION
COSTANTINO, J. - NOVEMBER 25, 1975

He and his wife, plaintiff Frances Miller, were the only directors of Realty in the year 1957.

In the year 1955, Mr. Miller wanted to invest in a partnership called Pittsburgh Properties. To obtain money for investment in the partnership, he had a check for \$65,000 issued by Stormguard to him personally. Mr. Miller in turn executed a promissory note in the sum of \$65,000 payable on demand to the order of Stormguard Corporation. The rate of interest on the promissory note was fixed at 2-1/2 percent.

Mr. David Rausch, who through the period in question was in charge of financial matters at Stormguard and Realty, told Mr. Miller in 1957 that Mr. Miller's loan from Stormguard would have to be replaced by a loan to Mr. Miller from Realty (Trial Tr. 51). This loan replacement was effected by issuing a check dated December 16, 1957 for \$65,000 on Realty's checking account payable to Mr. Miller. Mr. Miller endorsed this check on the back and gave it to Rausch. Mr. Miller intended that the Realty check would discharge his obligation to Stormguard (Trial Tr. 33).

Toward the end of 1962, an independent audit of the affairs of Stormguard and Realty was conducted by Mr.

MEMORANDUM DECISION
COSTANTINO, J. - NOVEMBER 25, 1975

Milton Seitman, a certified public accountant. Seitman discovered that although Realty had maintained books and records early in its existence, by 1955-1957 it no longer maintained books and records. Seitman was not able to determine the exact amount of Realty's earnings, though he determined that it had some earnings (Trial Tr. 58).

Seitman learned that the 1957 check drawn on Realty's account and endorsed by Mr. Miller was deposited in Stormguard's cash receipts and credited to an account called "exchanges." Although the 1957 Realty check was intended by Miller to discharge his outstanding indebtedness to Stormguard, Rausch failed to give Mr. Miller credit for the Realty check on Stormguard's books; specifically, after the Realty check was transferred to Stormguard, Stormguard's loan account continued to show that Mr. Miller had an outstanding indebtedness of \$65,000. After receiving the Realty check Rausch issued a check drawn on Stormguard's checking account for \$65,000 payable to Mr. Miller but never signed by the latter. This check was entered in Stormguard's cash disbursements book and was found in Rausch's drawer by Seitman (Trial Tr. 66-67).

The record indicates that Mr. Miller did not intend to repay the \$65,000 which Realty paid to him.

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Several factors support this conclusion. First, the original promissory note executed in 1955, whose terms were continued in the obligation to Realty in 1957, did not provide a repayment schedule. The note simply stated that repayment was to be made "on demand." In view of the fact that Mr. Miller had control of Stormguard in 1955 and Realty in 1957, as a practical matter Mr. Miller could choose not to repay the note at all. Second, Seitman's audit revealed that Mr. Miller never made any repayments on the principal to either Stormguard or Realty (Trial Tr. 75-76). Third, there is no indication in the record that Realty has ever sought to collect payments on the principal. Fourth, Mr. Miller advised Seitman that he would repay the principal if the Pittsburgh investment was ever dissolved. (Trial Tr. 78). Mr. Miller also told Seitman, however, that he hoped the Pittsburgh Properties investment would be "forever" (Trial Tr. 79-80). Indeed, when the Pittsburgh Properties investment had to be liquidated approximately five years prior to trial, Mr. Miller's best recollection is that he kept for his personal account the several hundred dollars he received as his share of the liquidated property (Trial Tr. 47). Contrary to his earlier statement, after the Pittsburgh Properties investment was liquidated he did not make any repayment on the

MEMORANDUM DECISION
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principal of his outstanding indebtedness. Fifth, the evidence supporting Mr. Miller's contention that he intended in 1967 to repay the \$65,000 indebtedness is extremely weak. It consists essentially of Mr. Miller's self-serving statements at trial, continuation in 1957 of the terms of the non-binding promissory note executed in 1955, and the making of interest payments on the loan (for which he took deductions on his tax returns, Trial Tr. 71). On the basis of the foregoing, this court concludes that at the time Realty made the \$65,000 payment in 1957, Mr. Miller did not intend to repay the principal sum.

Conclusions of Law

The legal issue in this case is whether the payment by Realty of \$65,000 to Mr. Miller in 1957 constitutes a dividend to the taxpayers as defined in 26 U.S.C. § 316. The latter statute defines dividend as any distribution of property by a corporation to its shareholders out of its earnings and profits accumulated after February 28, 1913 or out of the earnings and profits of the current taxable year. Under the 1954 Internal Revenue Code, money and any other property except stock or stock rights in the distributing corporation are treated as property distributed by a

MEMORANDUM DECISION
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corporation to the shareholder. 26 U.S.C. § 317(a).

Although Realty did not label the \$65,000 check made payable to Miller a dividend, the check may constitute a dividend nevertheless, see Regensburg v. Commissioner of Internal Revenue, 144 F.2d 41 (2d Cir. 1944), cert. denied, 323 U.S. 783 (1944). The crucial concept in a finding that there is a constructive dividend is that the corporation has conferred a benefit on the stock holder in order to distribute available earnings and profits without expectation of repayment. Tollefsen v. Commissioner of Internal Revenue, 431 F.2d 511, 513 (2d Cir. 1970), cert. denied, 401 U.S. 908 (1971); 1 Merten's Law of Federal Income Taxation § 9.07; see Joseph Lupowitz Sons, Inc. v. Commissioner of Internal Revenue, 497 F.2d 862 (3d Cir. 1974). In the case at bar, the first question is whether Realty conferred a benefit on Miller in issuing the \$65,000 check dated December 16, 1957. Although Stormguard's books do not indicate that the Realty check repaid Mr. Miller's loan, these book entries are merely evidentiary rather than controlling. 1 Merten's Law of Federal Taxation § 9.06. It is a basic principle of tax law that the "form into which a taxpayer casts a transaction will not obliterate the tax consequences that emerge from the substance of the

MEMORANDUM DECISION
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transaction." Tollefsen v. Commissioner of Internal Revenue, 431 F.2d at 512. Mr. Miller, the chief executive officer of both Realty and Stormguard, clearly intended to have the Realty check discharge his obligation to Stormguard (Trial Tr. 33). In view of this intention and the facts surrounding the transaction, the court must conclude that the distribution discharged Mr. Miller's obligation to Stormguard.

The \$65,000 diverted is taxable as income up to the amount of Realty's earnings and profits at the close of the taxable year in which the property was distributed. 26 U.S.C. § 316. The second question is, then, whether Realty had available earnings and profits in the sum of \$65,000 at the close of the taxable year in which the distribution was made. The burden is "on the individual taxpayers to establish that the corporation did not have earnings and profits equal to the amounts diverted."

DiZenzo v. Commissioner of Internal Revenue, 348 F.2d 122, 127 (2d Cir. 1965). Here, the plaintiffs have not shown that Realty had earnings and profits of less than \$65,000 at the close of the taxable year in which the distribution was made.

The third question is whether repayment was in fact contemplated by the parties. For the reasons given

MEMORANDUM DECISION
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above, the court concludes that repayment was not contemplated by the parties. Under the foregoing test, it is clear that the taxpayers received dividend income of \$65,000 in 1957. The court holds that the taxpayers are not entitled to recover the federal income taxes and interest they seek.

So ordered.

s/ Mark A. Costantino
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

NED MILLER and FRANCES MILLER, :

: 69-C-715

v. :

: DECREE

UNITED STATES OF AMERICA :

-----x

This action having been tried by the court without a jury and the court having entered a memorandum decision on October 19, 1973 containing therein findings of fact and conclusions of law, it is by the court,

ORDERED, ADJUDGED AND DECREED that the complaint be and hereby is dismissed without costs.

Dated, Brooklyn, New York, October 19, 1973.

S/ MARK A. COSTANTINO

U. S. D. J.

COMPLAINT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

NED MILLER and FRANCES MILLER, :

Plaintiffs, :

- against - :

COMPLAINT

UNITED STATES OF AMERICA, : Civil Action No. 69C-715

Defendant. :

- - - - - X

COMPLAINT

Plaintiffs by their attorneys, FREDERICK and
GOGLIO, as and for their complaint against the defendant
allege as follows:

1. The plaintiffs are NED MILLER and
FRANCES MILLER, husband and wife, citizens of the United
States, who reside at 35 Seacoast Terrace, Brooklyn,
New York.

2. The defendant is the UNITED STATES OF
AMERICA.

3. This is an action for recovery of internal
revenue taxes and this Court has jurisdiction by reason
of Title 28, U.S.C. Section 1346 (a).

4. Recovery is sought for federal income
taxes for the taxable year ended December 31, 1957.

COMPLAINT

Plaintiffs filed a timely joint federal income tax return for this period with the District Director or Internal Revenue, Brooklyn, New York, and paid income tax on account of such return in the amount of \$9,327.25 which included additional taxes assessed as a result of the first examination by the government of year 1957. Thereafter, as a result of a second audit for year 1957 the Internal Revenue Service assessed an additional tax of \$37,923.75 which was paid by the plaintiffs June 15, 1964 and June 29, 1964.

5. Thereafter, on May 13, 1966, plaintiffs filed a timely claim for refund for year 1957 with the District Director of Internal Revenue, Brooklyn, New York, copy of which claim is attached hereto and marked Exhibit A. Said claim for refund sought a refund of Federal income tax of \$37,923.75.

6. The claim for refund for the year 1957 is based upon the contention that the District Director erroneously alleged that the plaintiff, NED MILLER, received dividend income in 1957 of \$65,000.00 when in fact no dividend payments were received.

7. On May 20, 1968, the District Director mailed to plaintiffs a notice of disallowance of their claim for refund. (Marked Exhibit B)

8. Plaintiffs have overpaid their Federal

COMPLAINT

income tax for the year 1957 in the amount of \$37,923.75, are the sole owners of the aforementioned claim for refund, and have made no assignments of the said claim.

9. The collection of the tax mentioned in paragraph 5 above was erroneous, illegal and excessive in that the plaintiffs did pay to the defendant taxes on monies for which no tax was due or payable in that such dividend was not received, actually or constructively, as alleged by defendant.

WHEREFORE, plaintiffs demand judgment in the amount of \$37,923.75 plus such interest and costs as are allowed by law, and such other relief as the Court may deem just and equitable.

FREDERICK AND GOGGIO

By Irving Frederick
Irving Frederick
A Member of the Firm
Attorneys for the Plaintiffs
Office and Post Office Address
167 Willis Avenue
Mineola, New York 11501
516-248-8806

EXHIBIT A - CLAIM - ANNEXED TO COMPLAINT

FORM 843 <small>(Rev. July 1965)</small>	U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE <h2 style="margin: 0;">CLAIM</h2> <p>TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID</p>	District Director's Stamp <small>(Date Received)</small> <div style="font-size: 2em; font-weight: bold; text-align: center;">EXHIBIT A</div>
The District Director will indicate in the block below the kind of claim filed, and fill in, where required.		
<input checked="" type="checkbox"/> Refund of Taxes Illegally, Erroneously, or Excessively Collected. <input type="checkbox"/> Refund of Amount Paid for Stamps Unused, or Used in Error or Excess. <input type="checkbox"/> Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).		
PLEASE TYPE OR PRINT PLAINLY		
Name of taxpayer or purchaser of stamps Ned and Frances Miller		
Number and street 35 Seacoast Terrace, Apt. 18-B		City, town, State, Postal ZIP Code Brooklyn, New York 11235
Fill in applicable items—Attach letter size sheets if space is not sufficient		
a. Your social security number 055 01 9461	Wife's number, if joint return	b. If an employer, enter employer identification number
c. District in which return (if any) was filed Brooklyn	d. Name and address shown on return, if different from above Ned and Frances Miller 2302 Avenue "N", Brooklyn, New York	
e. Period — if for tax reported on annual basis, prepare separate form for each taxable year From January 1 , 19 57 , To December 31 , 19 57		f. Kind of tax Income
g. Amount of assessment \$ 37,923.75	Dates of payment 6/15/64, \$30,468.00; 6/29/54, \$21,519.65	
(Includes Interest)		
h. Date stamps were purchased from Government	i. Amount to be refunded (if income tax, complete computation below) \$ 37,923.75	j. Amount to be abated (not applicable to income, estate, or gift taxes)
k. The claimant believes that this claim should be allowed for the following reasons:		

See Rider Attached.

RECEIVED
 MAY 13 1965
 DIST. DIR. OF INT. REV.
 BROOKLYN 1, N.Y.
 # 4

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld	
2. Estimated tax paid	
3. Tax paid with original return	
4. Any additional income tax paid	
5. Total tax paid (Add lines 1-4)	
6. Less: Your computation of correct tax	
7. Amount of overpayment	
8. Amount previously refunded	
9. Net overpayment (Enter in item 1 above)	

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct.

Signed

Dated , 19

SEE INSTRUCTIONS ON REVERSE

FORM 843 (Rev. 7-65)

EXHIBIT A - CLAIM - ANNEXED TO COMPLAINT

SCHEDULE ATTACHED TO CLAIM FOR REFUND - Ned and Frances Miller
35 Seacoast Terrace
Apartment 18-B
Brooklyn, New York 11235

Claim for refund is made herein for year 1957 since the Revenue Agent who examined that year picked up as dividends the amount of \$65,000.00 allegedly paid by the 1680 Coney Island Avenue Realty Corporation. In fact, the said payment did not represent dividends but was a result of the manipulations of his accountant named David Rausch who allegedly embezzled funds from Ned Miller and related corporations.

If in fact there is a dividend of \$65,000.00 that dividend would have been earned in year 1955 as a payment from Miller Storm-guard Corporation, which corporation lent Mr. Ned Miller \$65,000.00 in that year.

The amount of additional tax assessed by the Revenue Agent in his report for year 1957 was \$37,923.75. This tax plus interest in the amount of \$14,063.90 computed to June 30, 1964 was paid and this claim herein requests refund of both the tax and the interest.

The computation of income tax refund on the face of this claim cannot be filled out since we do not have a copy of the original tax return filed nor do we have a copy of the Revenue Agent's report.

EXHIBIT B - NOTICE OF DISALLOWANCE - ANNEXED TO COMPLAINT

Address any reply to: P.O. Box 452, Andover, Mass. 01810

US Treasury Department

Internal Revenue
Service Center S ADJ
North-Atlantic Region

Date:

May 20, 1968

In reply refer to:

RSC 105



Ned & Frances Miller
35 Seacoast Terrace
Brooklyn, NY 11235

EXHIBIT B

CERTIFIED MAIL

Social Security Number or Employer Identification Number:	not given
Document Locator Number:	---
Type of Tax:	1040
Period Ending:	1957
Amount Claimed:	37,923.75
Date Claim Received:	May 12, 1966

Dear Taxpayer:

We received your claim for an adjustment of your taxes. I am sorry to tell you that we cannot allow your claim. This decision rests on certain provisions of the Internal Revenue Laws and regulations.

Hence, I have sent this letter to you by certified mail. This letter is your legal notice from Internal Revenue that your claim has been officially rejected. It has been disallowed in full.

If you still disagree, and wish to begin suit or proceeding for the recovery of any taxes, penalties, or other moneys for which this notice of disallowance is issued, the law requires you to do so within two years from the mailing date of this letter.

Sincerely yours,

Wm. E. Marvel

Director, Service Center

ANSWER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

NED MILLER and FRANCES MILLER, :

Plaintiffs, : CIVIL ACTION NO. 69-C-715

v. :

UNITED STATES OF AMERICA, :

Defendant. :

----- X

A N S W E R

Comes now the defendant, United States of America, by its attorney, Vincent T. McCarthy, United States Attorney for the Eastern District of New York, and answers the complaint as follows:

1. Defendant admits the allegations contained in paragraph 1 of the complaint.
2. Defendant admits the allegations contained in paragraph 2 of the complaint.
3. Defendant denies the allegations contained in paragraph 3 of the complaint, except admits that the plaintiffs seek recovery of internal revenue taxes. Defendant avers that jurisdiction, if any, exists under 28 U.S.C. Section 1346(a).
4. Defendant admits the allegations contained in

ANSWER

the first sentence of paragraph 4 of the complaint. Defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations made in the second and third sentences of paragraph 4 of the complaint.

5. Defendant admits the allegations contained in paragraph 5 of the complaint, except denies each and every allegation made in said claim for refund and the schedule attached thereto (Exhibit A), unless specifically admitted herein.

6. Defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint, except avers that the plaintiffs make substantially the same allegation in paragraph 6 of the complaint as was made in the claim for refund.

7. Defendant denies the allegations contained in paragraph 7 of the complaint.

8. Defendant denies the allegations contained in paragraph 8 of the complaint.

9. Defendant denies the allegations contained in paragraph 9 of the complaint.

SECOND DEFENSE (Lack of Jurisdiction)

10. The plaintiffs' complaint seeks a refund of

ANSWER

federal taxes paid with respect to the taxable year 1957 in the amount of \$37,923.75.

11. Section 7422(a) of the Internal Revenue Code of 1954, requires that a proper claim for refund be filed with the District Director of Internal Revenue. Section 6532(a) of the Internal Revenue Code of 1954 provides that no suit or proceeding may be brought by a taxpayer for the refund of taxes unless it is instituted within 2 years from the date of mailing of a certified notice of claim disallowance. Alternatively, if a waiver of statutory notice of claim disallowance is filed by the taxpayer, Section 6532(a), Internal Revenue Code of 1954, requires that the suit must be instituted within 2 years from the date that the waiver is filed.

12. The plaintiffs in this suit filed a waiver of statutory notice of disallowance on November 8, 1966. The plaintiffs' action was instituted on June 20, 1969. Since more than two years had lapsed after the date that the waiver was filed, this action is barred by Section 6532(a) of the Internal Revenue Code of 1954.

13. Since the plaintiffs have not filed a timely complaint seeking a refund of taxes with respect to the taxable year 1957, this Court lacks jurisdiction over

ANSWER

this suit pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

WHEREFORE, the defendant prays that the claim be dismissed and that judgment be entered for the defendant, together with costs.

United States Attorney

DECISION - UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT - DECIDED JULY 11, 1974

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 911—September Term, 1973.

(Argued May 22, 1974

Decided July 11, 1974.)

Docket No. 73-2756

NED MILLER, FRANCES MILLER,

Plaintiffs-Appellants,

v.

THE UNITED STATES OF AMERICA,

Defendant-Appellee.

Before:

SMITH and TIMBERS, *Circuit Judges,*
and TYLER,* *District Judge.*

Appeal from order of United States District Court for the Eastern District of New York, Mark A. Costantino, *Judge*, dismissing taxpayers' refund action on the grounds that the statute of limitations had expired.

Reversed.

LEONARD FELDMAN (Frederick & Goglio, New York, N.Y.), *for Appellants.*

CAROLYN R. JUST, Attorney, Tax Division, Dept. of Justice (Scott P. Crampton, Asst. Attorney General, Meyer Rothwacks, Bennet

* Of the Southern District of New York, sitting by designation.

DECISION - UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT - DECIDED JULY 11, 1974

N. Hollander, Attorneys, Tax Division,
Dept. of Justice, Washington, D.C. and
Robert Morse, U.S. Attorney, Eastern Dis-
trict of New York, of counsel), *for Appellee.*

SMITH, *Circuit Judge:*

This is an appeal from an order of the United States District Court for the Eastern District of New York, Mark A. Costantino, *Judge*, dismissing taxpayers' refund action on the grounds that the statute of limitations had expired. 365 F. Supp. 383 (1973). Because we agree with the taxpayers that the Commissioner is precluded from pleading the statute of limitations because he inadvertently led them to believe that their filing deadline had been extended, we reverse.

The relevant facts are unusual, but not unique. Taxpayers are husband and wife who elected to pay a contested deficiency of almost \$38,000 and then seek a refund from the Commissioner or the courts. Following a timely claim, the Service—according to normal practice—requested that the taxpayers waive a formal notice of disallowance. As the waiver form—known in the trade as Form 2297—clearly indicates, the effect of such an irrevocable waiver is to commence the two-year statute of limitations on refund actions.¹ 26 U.S.C. §6532(a)(3).

Taxpayers apparently executed this form, for the Service's files contain a letter from taxpayers' attorneys dated November 7, 1966, which states:

¹ 26 U.S.C. §6532(a)(3):

Waiver of Notice of Disallowance.—If any person file a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period . . . shall begin on the date such waiver is filed.

DECISION - UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT - DECIDED JULY 11, 1974

In re: Ned and Frances Miller
Claim for Refund—Year 1957

Gentlemen: Enclosed herein please find Form 2297, waiver of statutory notification of claim disallowance, executed by the above named clients.

We must say “apparently” because the Service has since misplaced the form. It is therefore forced to rely on the cover letter and consistent notations in its files to prove that the formal notice was waived.

Based on this circumstantial evidence the district court found that the waiver form had in fact been executed. While we recognize that the Commissioner has the burden of proving the affirmative defense of the statute of limitations, Fed. R. Civ. P. 8(c), and that here that burden is increased by his failure to produce the waiver form, we cannot say that the district court was “clearly erroneous” in reasoning that the cover letter must have been accompanied by the form.² See, *Daniel v. United States*, 454 F.2d 1166, 1167 (6th Cir.), cert. denied, 409 U.S. 843 (1972); *United States v. Ross*, 368 F.2d 455, 457 (2d Cir. 1966).

Assuming then that the waiver was executed on or before November 7, 1966, the filing deadline for a timely claim would have been November 7, 1968. However the higher echelons in the Service apparently overlooked the cover letter and docket entries—the form presumably having been misplaced—for on May 20, 1968 the Service sent the taxpayers the very disallowance notice they had waived

² We might well hold differently if the only evidence of the waiver were the Service's internal notes, or if the precise terms of the waiver had to be proven. Here, however, the critical evidence is the cover letter from the taxpayers' attorneys, and there is no suggestion that the Form 2297 therein conveyed was anything other than the standard form which we can judicially notice.

DECISION - UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT - DECIDED JULY 11, 1974

eighteen months before. That notice—which was but a form letter—was faithful to a *different* subsection of the statute of limitations in advising the taxpayers that they had two years *from the date of the notice* to file their refund action.³ 26 U.S.C. §6532(a)(1).

Thus the unnecessary disallowance notice apparently extended the filing deadline from November 7, 1968—as calculated according to the waiver form—to May 20, 1970. The taxpayers filed this action on June 20, 1969—seven months *after* the original deadline, but eleven months *before* the new one.

The Commissioner, in arguing that the unnecessary disallowance notice should be disregarded, stresses the general rule that a statute authorizing an action against the government must be strictly construed as a waiver of sovereign immunity. *United States v. Sherwood*, 312 U.S. 584, 586 (1941); *Minnesota v. United States*, 305 U.S. 382, 388 (1939); *Hammond-Knowlton v. United States*, 121 F.2d 192, 201-02 (2d Cir.), *cert. denied*, 314 U.S. 694 (1941). *But see, Panella v. United States*, 216 F.2d 622, 624 n. 3 (2d Cir. 1954) where then Judge Harlan noted that in the absence of specific congressional intent, the courts have vacillated between strict and liberal constructions of such statutes.

These cases, however, deal with the *substantive* nature of the authorization, and here there is no doubt that the taxpayers' refund action is authorized. 26 U.S.C. §7422. Nor is this case controlled by *United States v. Michel*, 282 U.S. 656, 658-60 (1931), where the Court held that the statute of

³ 26 U.S.C. §6532(a)(1):

General Rule.—No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun . . . after the expiration of 2 years from the date of mailing . . . to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

DECISION - UNITED STATES COURT OF APPEALS
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limitations on tax actions must similarly be narrowly construed. See also, *Gallion v. United States*, 389 F.2d 522, 523-24 (5th Cir. 1968) (citing numerous cases involving strict application of the statute); *Wallace v. United States*, 142 F.2d 240, 242-43 (2d Cir.), cert. denied, 323 U.S. 712 (1944) (reluctantly following this "niggardly rule"). Here the problem is not that there is one ambiguous statute that must be construed, but rather that there are two unambiguous subsections that appear to be equally controlling. That is, if we focus on the fact that the waiver was executed, §6523(a)(3) clearly requires that the taxpayers' action be dismissed. But if we focus on the equally undeniable fact that the Commissioner sent the taxpayers a formal disallowance notice, the more general rule of §6532(a)(1) applies and their action is timely.

The point, of course, is that these two subsections were intended to be mutually exclusive: And in the normal course of events, they are, as disallowance notices are not issued where a waiver has been executed. But here—through an oversight in the Commissioner's office—both events occurred, and hence the problem remains as to which subsection applies.

Both the Commissioner and the court below rely on §6532(a)(4) and its attendant regulation, §301.6532-1(d), in arguing that the earlier date should control:⁴

⁴ The cited regulation actually embellishes upon §6532(a)(4) in one important respect. Where the statute nullified reconsiderations "following the mailing of a notice . . . of disallowance," the regulation adds "or after the execution of a waiver. . . ." Taxpayers protest that this addition is improper and that the regulation is therefore inapplicable.

We cannot agree. In view of the latitude given the Commissioner in developing the regulations which provide the intricate—some would say labyrinthian—detail of our tax laws, *Bingler v. Johnson*, 394 U.S. 741, 749-51 (1969), we do not think that the extension here was "arbitrary" or "patently inconsistent with congressional intent." Indeed, we find the addition quite consistent with our holding that Congress intended the execution of a waiver and the issuance of a disallowance notice to be treated as equally significant events.

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Any consideration, reconsideration, or other action with respect to a claim after the mailing . . . of a notice of disallowance or after the execution of a waiver . . . shall not extend the period for bringing suit. . . .

Again we must disagree. Rather it seems clear that this regulation—in keeping with §6532 as a whole—merely nullifies any *informal* reconsideration after a formal disallowance notice or waiver. Here there was no such reconsideration, but rather two equally formal events. *Cf. Beardsley v. United States*, 126 F. Supp. 775, 776-77 (D. Conn. 1954).

Nor do we find any merit in the Commissioner's reliance on the line of cases holding that a taxpayer cannot extend the statute by filing successive claims. *See Stratmore v. United States*, 463 F.2d 1195, 1196-97 (3d Cir. 1972); *Einson-Freeman Co. v. Corwin*, 112 F.2d 683, 684 (2d Cir.), cert. denied, 311 U.S. 693 (1940); *Fajardo Sugar Growers Ass'n v. United States*, 161 F. Supp. 912, 916 (S.D.N.Y. 1958), *aff'd per curiam*, 264 F.2d 671 (2d Cir. 1959). Here, of course, it was not the taxpayers' unilateral filing of a second claim, but rather the Commissioner's error in sending the unnecessary disallowance notice that arguably extended the critical deadline.

Finally, we are faced with the somewhat more troublesome question of whether in any event such inadvertence can estop the government. Here we are not unmindful of the line of cases—declining in force, but nevertheless still with us—holding that the government is not estopped by an *unauthorized* act of one of its agents. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 383-85 (1947); *Wilber National Bank v. United States*, 294 U.S. 120, 123-24 (1935); *Yuma Water Ass'n v. Schlecht*, 262 U.S. 138, 144 (1923); *Utah Power & Light Co. v. United States*, 243 U.S. 389, 408-09 (1917); *Posey v. United States*, 449 F.2d 228,

DECISION - UNITED STATES COURT OF APPEALS
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233-34 (5th Cir. 1971); *Bornstein v. United States*, 345 F.2d 558, 562-63 (Ct. Cl. 1965); *Walsonavich v. United States*, 335 F.2d 96, 101 (3d Cir. 1964); *Goldstein v. United States*, 227 F.2d 1, 4 (8th Cir. 1955); *United States v. Globe Indemnity Co.*, 94 F.2d 576, 578 (2d Cir.), *cert. denied*, 304 U.S. 575 (1938).

But while the issuance of the disallowance notice was obviously erroneous, we cannot say that it was "unauthorized" or even that it was contrary to congressional intent. Rather we believe that the alternative subsections of §6532 demonstrate a flexible approach. As another court has held in a case where the Service similarly issued a disallowance notice after a waiver had been executed:

A judge must be careful not to hold the government estopped to set up the defense of limitations in situations where there is any suggestion of collusion, or in a way which would either invite collusion or defeat the purpose of the statute. In this instance, the statute, in paragraph (2) of sec. 6532(a), permits an extension of the 2-year period of limitations by an agreement in writing between the taxpayer and the Secretary or his delegate. Thus there is clear legislative recognition that the 2-year period of limitation is not inflexible. It will do no violence to the spirit of sec. 6532 in its entirety to hold that . . . the inadvertent action of the Director in sending notices of disallowance which stated that no suit "may be begun after the expiration of two years from the date of mailing this letter", coupled with the reliance, albeit careless, by taxpayer's lawyer on that statement, estops the government from successfully asserting that this action must be dismissed because not brought within two years after the filing of the waivers.

DECISION - UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT - DECIDED JULY 11, 1974

Exchange and Savings Bank of Berlin v. United States, 226 F. Supp. 56, 58 (D. Md. 1964).⁵ See also, *Exchange and Savings Bank of Berlin v. United States*, 242 F. Supp. 838 (D. Md. 1965), *rev'd in part*, 368 F.2d 334 (4th Cir. 1966).

We would note in this regard that our holding does no violence to the fundamental purpose of any statute of limitations—the barring of stale claims. *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944). The statutory limit of two years remains the same whichever triggering event is chosen, and the timing of that critical event remains completely within the control of the Commissioner. Indeed it is difficult to see how the Commissioner will be prejudiced by a seven-month “extension” on a claim which he did not disallow until four years after the contested taxes were paid and the initial refund claim was filed. The Commissioner must merely defend one more refund action for a not insubstantial amount.

In sum, given that the relevant statute of limitations is by its very terms rather flexible, that there is no suggestion that anyone in the Service acted in collusion with the tax-

5 Though the Commissioner candidly admits that he believes *Exchange Bank* was wrongly decided, he nevertheless gamely attempts to distinguish it on the grounds that there the attorney who prepared and filed the action had not been with the law firm when the waiver was executed, while here the same attorneys were responsible for the case throughout. However this distinction assumes that it is less likely that a new attorney—reviewing a file in preparation of a complaint—will note the inconsistency between the waiver and disallowance forms than that an attorney will remember a routine waiver for almost two years.

While we doubt that either is very likely, we trust that most in our profession would judge legal competency more by an ability to read than by a photographic memory. Thus while we cannot endorse the rather lax filing system of taxpayers' attorneys—who apparently also misplaced the waiver form—we cannot say that their reliance on the subsequent disallowance notice was so unreasonable that their clients should be denied their day in court.

DECISION - UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT - DECIDED MAY 11, 1974

payers to defraud the federal fisc, and that the taxpayers' reliance on the erroneously issued disallowance notice was not unreasonable, we conclude that the government is estopped from raising the earlier deadline as a bar to this action.

We reverse and order that the case be restored to the district court's docket.

MEMORANDUM DECISION
COSTANTINO, J. - OCTOBER 19, 1973

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
NED MILLER and FRANCES MILLER, :
 : 69-C-715
 v. :
 :
 : MEMORANDUM DECISION
UNITED STATES OF AMERICA, :
 : OCT 19 1973
-----x

A p p e a r a n c e s :

Frederick & Goglio, Esqs., by Leonard Feldman, Esq., 167
Willis Avenue, Mineola, New York 11501, for plaintiffs

Robert M. Adler, Esq., Department of Justice, Washington,
D.C. 20530, for the United States

COSTANTINO, D.J.

This is an action for a refund of income taxes brought by plaintiffs Ned and Frances Miller. An audit of the Millers' joint 1957 Income Tax Return in 1966 resulted in a determination of a deficiency of \$37,923.75. An assessment was made and the amount was paid in full by the Millers. On May 13, 1966 the Millers filed a claim for a refund. The case was tried to the court on April 5, 1973, decision being reserved and leave given to counsel to submit post trial briefs.

At issue are two questions. First, has the

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statute of limitations run on the claim for a refund, and second, if it has not, was the transaction involved here a loan from a corporation controlled by Mr. Miller as plaintiff contends, or was it a taxable dividend as the Internal Revenue Service believes. A finding of fact on the second question is unnecessary as the court finds that plaintiffs are barred by the statute of limitations from bringing this action. The court finds the following facts and conclusions of law dispositive of this case.

Whether the Millers ever filed a "Form 2297" Waiver of Statutory Notification of Claim Disallowance, is the threshold question. The form itself cannot be found. The claim for refund was made on May 13, 1966 and on November 8, 1966 a letter written by Mr. Irving Frederick, attorney for the Millers in this suit, was received by Mr. William Krebs, Revenue Agent for the Internal Revenue Service, which said:

November 7, 1966

In re: Ned and Frances Miller
Claim for Refund - Year 1957

Gentlemen: Enclosed herein please find Form 2297, waiver of statutory notification of claim disallowance,

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executed by the above named
clients.

Very truly yours,
Irving Frederick.

Mr. Frederick testified at the trial that he "must have" sent the waiver but that it could have been for other 1957 claims by the Millers. He suggested that Mr. Krebs may have been trying to "get something else out of the way." While it is true that Mr. Miller had two other potential claims for 1957, it appears from the record that they were never filed and therefore waivers would have been unnecessary.

In addition, there are two notations in Mr. Krebs' files on this case which bear on the question of the waiver's existence. On the "Examining Officer's Activity Record" next to "11/8" it says, "2297 Received." On the "Transmittal Letter" dated "11/23/66" the following appears: "Taxpayer has signed and submitted Form 2297 waiving statutory notice of claim disallowance."

On December 14, 1966 the Millers' claim was rejected and a "30-day letter" was sent to the Millers. On January 9, 1967 they filed a protest with the Appellate Division of the Internal Revenue Service and the disallowance of the claim was sustained. On May 20, 1968 a "statutory notification of claim disallowance" was issued which included

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the following sentence:

If you still disagree, and wish to begin suit or proceeding for the recovery of any taxes, penalties, or other moneys for which this notice of disallowance is issued, the law requires you to do so within two years from the mailing date of this letter.

The Millers' suit was filed on June 20, 1969 - within two years of the "statutory notification of claim disallowance" but not within two years of the alleged filing of the waiver on November 8, 1966.

The first question to be resolved is whether the waiver ever existed. It seems unlikely that Mr. Frederick would have submitted the above quoted cover letter if there was no waiver accompanying it. Mr. Krebs' notations further buttress this conclusion. While no physical waiver has been found, the court has considered the documentary evidence and weighed the testimony of Mr. Miller, Mr. Frederick, and the Internal Revenue agent, and notwithstanding the failure of Mr. Frederick and Mr. Miller to recollect having sent it, this court has reached the conclusion that the waiver was indeed submitted.

The next question is whether the Millers were entitled to rely on a letter sent by Moe J. Kaplan, Internal Revenue Service Appellate Conferee in this case,

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on May 20, 1968, to determine the date from which the statute of limitations ran and whether the government is therefore estopped from pleading the statute of limitations. The Internal Revenue Code, 26 U.S.C. Section 6532(a)(3) reads:

If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) [time for bringing a suit for refund] shall begin on the date such waiver is filed.

26 U.S.C. Section 6532(a)(4) reads:

Any consideration, reconsideration, action by the Secretary or his delegate with respect to such claim following the mailing of a notice by certified mail or registered mail of a disallowance shall not operate to extend the period within which suit may be begun.

Treasury Regulation 26 C.F.R. Section 301.6532-1(c) provides:

The taxpayer may sign a waiver of the requirement that he be mailed a notice of disallowance. Such waiver is irrevocable....

Treasury Regulation 26 C.F.R. Section 301.6532-1(d) provides:

[A]ny consideration, reconsideration, or other action with respect to a claim after the mailing by registered mail... of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a).

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The Millers contend that since no mention of a waiver is made in Section 6532(a)(4) of the statute, the Regulation making the statute of limitations non-extendable when a period is initiated by waiver is "not authorized." They cite Dixon v. United States, 381 U.S. 68 (1964) and other cases to support their position that administrative regulations which differ from the supporting statutes are ineffective. The court in Dixon quoted the general rule from Manhattan General Equipment Co. v. Commissioner, 297 U.S. 129 (1936):

The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law - for no such power can be delegated by Congress - but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute.... And not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable. *Id.* at 134.

It is clear that waivers and statutory notices of disallowance are given similar effect - both start the statute of limitations running - and for the Regulation to include waivers is not at all "inconsistent" with the statute, nor is it unreasonable. The Regulation indicates that the statute of limitations ran from November 8, 1966 and was irrevocable and this court so holds.

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On May 20, 1968 a statutory notice of disallowance was sent purporting to give the Millers two years to file an action. The testimony of Mr. Kaplan, the appellate conferee, as brought out on cross-examination by the Millers, indicates that he did not know that the waiver had been executed, could not explain how he overlooked the notations in the file and would not have sent the notice with the above quoted sentence had he known of the waiver. The Millers assert that the government is estopped from pleading the statute of limitations because of the action of Mr. Kaplan in sending that notice.

Initially, 26 C.F.R. 301. 6532-1(d) says that further consideration of a claim cannot extend the statute of limitations. The Millers rely on two cases, Exchange and Savings Bank of Berlin v. United States, 226 F. Supp. 56 (D.Md. 1964) and Walsonovich v. United States, 335 F. 2d 96 (3d Cir. 1964), to show that the actions of government officials in sending notices like the one at issue here, will extend the statute of limitations by estopping the government from asserting the statute. They argue that the government's action caused others to rely on the representations made. The Millers assert that Exchange and Savings Bank is identical to the present suit. It is similar, but it has one important difference. There, the attorney who relied on the statutory notice of disallowance

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was not representing the claimants when the waiver was executed and did not know that it had been executed. Here, not only was Mr. Frederick the attorney representing the Millers at the time the waiver was sent, it was he who sent it. He had full knowledge of its existence and cannot now assert lack of knowledge as could the attorney in Exchange and Savings Bank. The facts in Walsonavich v. United States 335 F. 2d 96 (3d Cir. 1964) differ considerably from those in the present case. There a greater need for the estoppel was shown as the Commissioner of Internal Revenue had entered into a consent agreement to extend the period of limitations for testing a questionable tax. Reliance on that agreement by the taxpayers estopped the government from pleading the original statute of limitations. To extend that principal to this case would do violence to the holding there, would be unreasonable, and would be contrary to the clear statutory intent of Congress in enacting section 6532 (a)(3).

The case law in the Second Circuit is clear in its requirement of strict adherence to the statutory rules. Eison-Freeman Co. v. Corwin, 112 F. 2d 683 (2d Cir. 1940); Golden Gate Motor Inn, Inc. v. United States, 27 Am. Fed. Tax R. 2d 799 (E.D.N.Y. Feb. 19, 1971). In both cases the court ruled that the statute of limitations ran from the

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first rejection of the taxpayer's claim for refund and subsequent consideration by the Internal Revenue Service would not "establish that it was a new claim for the purposes of applying [the] statute of limitations." Golden Gate at 802.

Accordingly, in this case estoppel is not an appropriate reply to the defense of statute of limitations. The action by the Millers is therefore barred by the statute of limitations and this court lacks jurisdiction to rule on the merits of the plaintiffs' allegations.

The above opinion will constitute findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

S/MARK A. COSTANTINO
U. S. D. J.

SERVICE OF ^{Copy} / ~~COPIES~~ OF THE WITHIN
Appellants' Appendix
IS HEREBY ADMITTED.

DATED:

Attorney for

UNITED STATES ATTORNEY

FEB 19 11 19 AM '76

EASTERN DISTRICT
OF NEW YORK

John E. Morris

STATE OF NEW YORK
COUNTY OF NEW YORK

EDWARD TAYLOR being duly sworn deposes
and says: On *February 19th*, 1976 I served the
within record on appeal brief appendix on *Assistant Attorney General*
Scott P. Crampton the attorney for the
respondent by leaving mailing ~~three~~ ^{one} copies thereof
at his office located at *Tax Division*
Department of Justice
Washington, D.C. 20530

Sworn to before me
this *19th* day of
February, 1976

Roe Deamer

ROSE GOLDMAN
COMMISSIONER OF DEEDS
CITY OF NEW YORK 10035
Certificate filed in New York County
Commission Expires July 1, 1977